



City Council Chambers  
3300 Capitol Avenue  
Fremont, California

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### City Council

Bob Wasserman, Mayor

Suzanne Lee Chan, Vice Mayor

Anu Natarajan

Bill Harrison

Dominic Dutra

### City Staff

Fred Diaz, City Manager

Harvey E. Levine, City Attorney

Mark Danaj, Assistant City Manager

Dawn G. Abrahamson, City Clerk

Harriet Commons, Finance Director

Marilyn Crane, Information Technology Svcs. Dir.

Annabell Holland, Community Services Director

Norm Hughes, City Engineer

Bruce Martin, Fire Chief

Jim Pierson, Public Works Director

Jeff Schwob, Interim Community Dev. Director

Suzanne Shenfil, Human Services Director

Craig Steckler, Chief of Police

Brian Stott, Human Resources Director

Lori Taylor, Economic Development Director

Elisa Tierney, Redevelopment Director

## City Council Agenda and Report [Redevelopment Agency of Fremont]

### General Order of Business

1. Preliminary
  - Call to Order
  - Salute to the Flag
  - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
  - Public Hearings
  - Appeals
  - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

### Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

### Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



## **Addressing the Council**

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

## **Oral Communications**

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

**To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.**

**The City Council Agendas may be accessed by computer at the following Worldwide Web Address: [www.fremont.gov](http://www.fremont.gov)**

## **Information**

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website ([www.Fremont.gov](http://www.Fremont.gov)).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

## **Availability of Public Records**

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk  
City of Fremont  
3300 Capitol Avenue, Bldg. A  
Fremont, California 94538  
Telephone: (510) 284-4060

*Your interest in the conduct of your City's business is appreciated.*

**NOTICE AND AGENDA OF SPECIAL MEETING  
CLOSED SESSION  
CITY OF FREMONT**

**DATE:** Tuesday, June 7, 2011

**TIME:** 5:15 p.m.

**LOCATION:** Fremont Room, 3300 Capitol Avenue, Fremont-

**CALL TO ORDER**

**ROLL CALL**

**PUBLIC COMMENT:**

Any person desiring to speak on an item listed on this Notice, may do so now. The Mayor will limit the length of your presentation and each speaker may only speak once on each item.

- 1) **CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Mark Danaj, Assistant City Manager; Brian Stott, Human Resources Director and Harvey Levine, City Attorney as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Association of Management Employees  
Fremont Association of City Employees  
Operating Engineers  
Teamsters Local 856  
Fremont Police Association  
Professional Engineers and Technicians Association

- 2) **CONFERENCE WITH LABOR NEGOTIATOR:** The City Council will hold a special meeting which will commence as an open meeting and then adjourn to a closed session as authorized by subdivision (a) of Section 54957.6 of the Government Code for the purpose of reviewing its position for upcoming employee negotiations and for instructing Fred Diaz, City Manager; Mark Danaj, Assistant City Manager; Brian Stott, Human Resources Director and

Harvey Levine, City Attorney as the City's negotiators regarding salaries, salary schedules, compensation paid in the form of fringe benefits of its represented and unrepresented employees, and for any other matters within the statutorily provided scope of representation.

The names of the organizations representing employees in question are:

Fremont Fire Fighters  
Fremont Fire Fighters Battalion Chiefs

**3) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

This Closed Session is authorized by subdivision (a) of Section 54956.9 of the Government Code and will pertain to existing litigation in one matter.

City of Fremont v. LBA Realty Fund II – WBP II, LLC

This Special Meeting is being called by Mayor Wasserman.

**AGENDA**  
**FREMONT CITY COUNCIL REGULAR MEETING**  
**JUNE 7, 2011**  
**COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A**  
**7:00 P.M.**

**1. PRELIMINARY**

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

**2. CONSENT CALENDAR**

*Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.*

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances  
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – for the Regular Meeting of May 10, 2011, for the Special and Regular Meetings of May 24, 2011*
- 2.3 *Second Reading and Adoption of an Ordinance of the City of Fremont Amending the Precise Plan for Planned District P-2005-131*

*RECOMMENDATION: Adopt ordinance.*

**2.4 ADOPTION OF A RESOLUTION APPROVING REVISIONS TO THE CITY FINANCE DEPARTMENT RETENTION SCHEDULE**

*Adoption of a Resolution Approving Revisions to the Finance Department Retention Schedule*

*Contact Person:*

<i>Name:</i>	<i>Dawn G. Abrahamson</i>	<i>Mark Danaj</i>
<i>Title:</i>	<i>City Clerk</i>	<i>Assistant City Manager</i>
<i>Dept.:</i>	<i>City Clerk</i>	<i>City Manager</i>
<i>Phone:</i>	<i>510-284-4063</i>	<i>510-284-4005</i>
<i>E-Mail:</i>	<i>dabrahamson@fremont.gov</i>	<i>mdanaj@fremont.gov</i>

*RECOMMENDATION: Adopt a Resolution approving revisions to the Finance Department Retention Schedule, and granting approval for the destruction of records in accordance with the Retention Schedule, subject to the review and consent of the City Attorney.*

**2.5 ADULT CROSSING GUARD CONTRACT**

*Authorization for the City Manager, or his Designee, to Sign an Agreement with All City Management Services for the Purpose of Providing Adult Crossing Guard Services Throughout the School Year*

*Contact Person:*

<i>Name:</i>	<i>Mark Riggs</i>	<i>Richard Lucero</i>
<i>Title:</i>	<i>Lieutenant</i>	<i>Captain</i>
<i>Dept.:</i>	<i>Police Department</i>	<i>Police Department</i>
<i>Phone:</i>	<i>510-790-6913</i>	<i>510-790-6818</i>
<i>E-Mail:</i>	<i>mriggs@fremont.gov</i>	<i>rlucero@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager, or his designee, to execute a contract to award adult crossing guard services to All City Management Services in an amount not to exceed \$175,000 per year for a three-year term.*

**2.6 PARTICIPATION IN THE SAN FRANCISCO PRIDE PARADE**

*Authorization for the City Manager to Enter into an Agreement with the San Francisco Pride Celebration Committee to Allow the City to Officially Participate in the Pride Parade*

*Contact Person:*

<i>Name:</i>	<i>Arquimides Caldera</i>	<i>Suzanne Shenfil</i>
<i>Title:</i>	<i>Deputy Director</i>	<i>Director</i>
<i>Dept.:</i>	<i>Human Services</i>	<i>Human Services</i>
<i>Phone:</i>	<i>510-574-2056</i>	<i>510-574-2056</i>
<i>E-Mail:</i>	<i>acaldera@fremont.gov</i>	<i>sshensfil@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager to enter into an agreement as described in the staff report with the San Francisco Lesbian, Gay, Bisexual, Transgender Pride Celebration Committee Inc. (SF Pride Celebration Committee), in order for the Human Relations Commission and other residents to participate, and officially represent the City, in the San Francisco Pride Parade.*

**2.7 CONSTRUCTION MATERIALS TESTING CONSULTANT SERVICES CONTRACT FOR 2011**

*Award Contract for Construction Materials Testing Consultant Services for 2011 Asphalt Overlay Project and Phase I of the Beacon Avenue, California Street and Walnut Avenue Project to Kleinfelder West, Inc.*

*Contact Person:*

<i>Name:</i>	<i>Craig Covert</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510- 494-4785</i>	<i>510-474-4748</i>
<i>E-Mail:</i>	<i>ccover@fremont.gov</i>	<i>nhughes@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager or his designee to execute a Master Service Agreement with Kleinfelder West, Inc., for construction materials testing consultant services for the 2011 Asphalt Overlay and the Phase I - Beacon Avenue, California Street and Walnut Avenue projects in an amount not to exceed \$150,000.*

**2.8 FINAL MAP FOR TRACT 8049 AND IMPROVEMENT AGREEMENT - PLANNING AREA 5, PACIFIC COMMONS - CATELLUS LAND AND DEVELOPMENT CORPORATION**

*Approval of Final Map for Tract 8049 and Improvement Agreement for Planning Area 5 Tract 8049 for the Construction of Public Streets (Bunche Drive and Pacific Commons Boulevard) and Dedication of Land and Public Easements - Pacific Commons*

*Contact Person:*

<i>Name:</i>	<i>Jayson Imai</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Engineering/Public Works</i>	<i>Engineering/Public Works</i>
<i>Phone:</i>	<i>510-494-4732</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>jimai@fremont.gov</i>	<i>nhughes@fremont.gov</i>

*RECOMMENDATION: Adopt a resolution:*

- 1. Approving the final map and the improvement plans for Tract 8049.*
- 2. Approving the Agreement for Public Street Improvements entitled, "Improvement Agreement Public Street Improvements Tract 8049", with the developer, Catellus Land and Development Corporation, and authorizing the City Manager to execute the agreement on behalf of the City.*
- 3. Accepting the developer's offer of dedication of land, as identified on the final map, provided that the acceptance of the offer of dedication of land for any public improvements shall be conditioned upon the developer's completion of improvements to the satisfaction of the City Engineer.*

**2.9 NILES BOULEVARD BRIDGE REPLACEMENT PROJECT APPROPRIATION**  
*Appropriate Highway Bridge Program (HBP) Funds in the Amount of \$448,000 to the Niles Boulevard Bridge Replacement Project over BART/UPRR, City Project No. 8460(PWC)*

*Contact Person:*

<i>Name:</i>	<i>Jeanne Suyeishi</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4728</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>jsuyeishi@fremont.gov</i>	<i>nhughes@fremont.gov</i>

*RECOMMENDATION: Appropriate HBP Funds in the amount of \$448,000 to 522PWC8460 (Niles Boulevard Bridge Replacement over BART/UPRR).*

**2.10 PASEO PADRE PARKWAY STREET LIGHT POLE REPLACEMENT PROJECT**

*Accept the Highway Safety Improvement Program (HSIP) Grant and Appropriate the Grant Funds of \$143,370 to the Paseo Padre Parkway Street Light Pole Replacement Project between Walnut Avenue and Washington Boulevard, City Project No. 8756(PWC).*

*Contact Person:*

<i>Name:</i>	<i>Jeanne Suyeishi</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Public Works</i>	<i>Public Works</i>
<i>Phone:</i>	<i>510-494-4728</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>jsuyeishi@fremont.gov</i>	<i>nhughes@fremont.gov</i>

*RECOMMENDATION:*

- 1. Authorize the City Manager or designee to accept the HSIP grant and to execute any associated grant documents.*
- 2. Appropriate funds in the grant amount of \$143,370 to 522PWC8756 (Paseo Padre Electrolier Replacement – Walnut to Washington).*
- 3. Transfer funds in the amount of \$15,930 from 142PWC8293 (Paseo Padre Electrolier Replacement) to 142PWC8756 (Paseo Padre Electrolier Replacement – Walnut to Washington).*

**2.11 DRISCOLL ROAD HOMES (ALSO KNOWN AS THE ADVENTIST/ROBSON SUBDIVISION) – 225 DRISCOLL ROAD**

*Consideration of Planning Commission Recommendation to Introduce an Ordinance Adopting a Precise Planned District (P-2010-280), and to Approve a Preliminary Grading Plan, Private Street, Variance for a Modified Public Street, and Vesting Tentative Tract Map 8052 to Develop a 9-lot Single-Family Residential Subdivision on a Vacant Portion of the Seventh-Day Adventist Church Property. (PLN2010-00280)*

*Contact Person:*

<i>Name:</i>	<i>Stephen Kowalski</i>	<i>Jeff Schwob</i>
<i>Title:</i>	<i>Associate Planner</i>	<i>Interim Director</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4532</i>	<i>510-494-4527</i>
<i>E-Mail:</i>	<i>skowalski@fremont.gov</i>	<i>jschwob@fremont.gov</i>



**RECOMMENDATION:**

1. *Introduce an ordinance rezoning the property to Planned District (P-2010-280);*
2. *Find that the Precise Plan for the project, and Vesting Tentative Tract Map No. 8052 and the accompanying Private Street, Modified Public Cul-de-Sac, and Preliminary Grading Plan as depicted in Exhibits “C” and “D”, respectively, fulfill the applicable requirements set forth in the Fremont Municipal Code;*
3. *Approve the Precise Plan as shown on Exhibit “C” (site plan, floor plans, building elevations and landscape plans), and Vesting Tentative Tract Map No. 8052 and the accompanying Private Street, Modified Public Cul-de-Sac, and Preliminary Grading Plan as shown in Exhibit “D”, based upon the findings contained in this report and subject to the conditions of approval set forth in Exhibit “F”;*
4. *Approve the proposed Affordable Housing Plan as shown in Exhibit “E” authorizing the applicant to purchase two off-site market-rate 3-bedroom condominium units for conversion to Below-Market-Rate units, or pay the required in-lieu fees to achieve compliance with the Affordable Housing Ordinance;*
5. *Approve the proposed removal and mitigation for all private, protected trees pursuant to the City’s Tree Preservation Ordinance and as described in the staff report and conditions of approval set forth in Exhibit “F”; and*
6. *Direct staff to prepare and the clerk to publish a summary of the ordinance.*

**2.12 PACIFIC COMMONS GATEWAYS AND SIGNAGE STANDARDS AMENDMENT (PLN2010-00221)**

*Public Hearing (Published Notice) to Consider the Planning Commission Recommendation to Adopt an Ordinance Amending the Development Standards and Guidelines Pertaining to Gateways and Signage Standards for Pacific Commons (Planned District P-2000-214)*

**Contact Person:**

<b>Name:</b>	Clifford Nguyen	Barbara Meerjans
<b>Title:</b>	Associate Planner	Interim Planning Manager
<b>Dept.:</b>	Community Development	Community Development
<b>Phone:</b>	510-494-4769	510-494-4451
<b>E-Mail:</b>	cnguyen@fremont.gov	bmeerjans@fremont.gov

**RECOMMENDATION:**

1. *Hold public hearing.*
2. *Find that the Environmental Impact Report (SCH#19996052016), including the 2000 and 2010 Supplement to the Environmental Impact Report, previously prepared for this project is sufficient, and that there are no substantial changes with respect to the project and/or its circumstances which require major revisions of the SEIR due to new significant environmental effects, a substantial increase in the severity of previously identified significant effects, or new information of substantial importance.*
3. *Find that the proposed project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the*

*designations, goals and policies set forth in the General Plan's Local Economy Chapter as enumerated within the staff report.*

4. *Waive full reading and introduce an Ordinance adopting the Planned District Major Amendment as shown in Exhibit "I" (2010 Revised Supplement B, Pacific Commons Planned District Development Standards and Guidelines), based on findings and subject to conditions in Exhibit "J."*
5. *Direct staff to prepare and the Clerk to publish a summary of the ordinance.*

### **3. CEREMONIAL ITEMS**

- 3.1 Proclamation: Pride Month

### **4. PUBLIC COMMUNICATIONS**

- 4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – The Public Financing Authority Board will convene at this time and take action on the agenda items listed on the Public Financing Authority Agenda. [See separate agenda](#) (lilac paper).

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

### **5. SCHEDULED ITEMS**

- 5.1 PUBLIC HEARING ON THE FY 2011/12 OPERATING BUDGET  
First Public Hearing and Council Direction to Staff on the Proposed Fiscal Year 2011/12 Operating Budget

Contact Person:

Name:	Catherine Chevalier	Harriet Commons
Title:	Budget and Revenue Manager	Director
Dept.:	Finance	Finance
Phone:	510-494-4615	510-284-4010
E-Mail:	cchevalier@fremont.gov	hcommons@fremont.gov

RECOMMENDATION:

1. Hold a public hearing.
2. Provide direction to staff on issues pertaining to the FY 2011/12 proposed operating budget.

5.2 PUBLIC HEARING ON FY 2011/12 - 2015/16 CIP BUDGET

First Public Hearing and Council Direction to Staff on the Proposed FY 2011/12 - 2015/16 Capital Improvement Program (CIP) Budget

Contact Person:

Name:	Sean O'Shea	Norm Hughes
Title:	Management Analyst II	City Engineer
Dept.:	Public Works	Public Works
Phone:	510-494-4777	510-494-4748
E-Mail:	soshea@fremont.gov	nhughes@fremont.gov

RECOMMENDATIONS:

1. Hold a public hearing.
2. Receive and consider all capital improvement projects proposed for the Five-Year FY2011/12-2015/16 CIP.
3. Provide direction as needed on the FY2011/12-2015/16 proposed CIP, for consideration on June 14, 2011.

5.3 APPEAL OF PLANNING COMMISSION APPROVAL OF ZONING

ADMINISTRATOR PERMIT FOR A DANCE SCHOOL –43725 BOSCELL ROAD  
Public Hearing (Published Notice) to Consider a Third Party Appeal of a Planning Commission Decision to Uphold the Approval of a Zoning Administrator Permit to Allow a Dance School in the Pacific Commons Shopping Center (PLN2011-00133)

Contact Person:

Name:	Tanu Jagtap	Barbara Meerjans
Title:	Staff Planner	Interim Planning Manager
Dept.:	Community Development	Community Development
Phone:	510-494-4537	510-494-4451
E-Mail:	tjagtap@fremont.gov	bmeerjans@fremont.gov

RECOMMENDATION:

1. Hold the public hearing;
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guideline 15301, Leasing of Existing Facilities;

3. Find the project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives, and policies set forth in the Land Use and Local Economy Chapters of the City's General Plan as enumerated within the staff report; and
4. Deny the appeal and uphold the approval of Zoning Administrator Permit PLN2011-00133 as shown in Exhibit "A" and described in Informational Item #1, based on the findings and as conditioned by the Zoning Administrator as shown in Exhibit "B".

## **6. REPORT FROM CITY ATTORNEY**

- 6.1 Report Out from Closed Session of Any Final Action

## **7. OTHER BUSINESS**

### **7.1 AUTHORIZATION TO NEGOTIATE AND EXECUTE IMPROVEMENT AND MAINTENANCE AGREEMENTS WITH PROPERTY OWNERS FOR ACCEPTANCE AND IMPROVEMENT OF IRON HORSE LANE**

Authorize the City Manager, or His Designee, and the Redevelopment Agency Executive Director, or His Designee, to Negotiate and Execute Improvement and Maintenance Agreements Between the City of Fremont, the Redevelopment Agency of the City of Fremont, and Owners of Real Property Abutting Iron Horse Lane, under Certain Prescribed Conditions, in Order to Cause the Physical Improvement and Acceptance of Iron Horse Lane from F Street to its Southeastern Terminus as a Public Street

#### **Contact Person:**

Name:	Josh Huber	Elisa Tierney
Title:	Redevelopment Project Manager	Redevelopment Director
Dept.:	Housing and Redevelopment	Housing and Redevelopment
Phone:	510-494-4513	510-494-4501
E-Mail:	jhuber@fremont.gov	etierney@fremont.gov

**RECOMMENDATION:** Staff recommends that the City Council and Redevelopment Agency Board authorize the City Manager, or his designee, and the Redevelopment Agency Executive Director, or his designee, to negotiate and execute Improvement and Maintenance Agreements with the owners of real property abutting Iron Horse Lane, under the conditions described in this staff report, in order to cause the physical improvement and acceptance of Iron Horse Lane from F Street to its southeastern terminus as a public street.

### **7.2 ACQUISITION OF THE MUNICIPAL PARCEL FROM THE REDEVELOPMENT AGENCY**

Adopt Resolution Authorizing the City of Fremont to Purchase the Municipal Parcel from the Redevelopment Agency and Make Related Statutory Findings

Contact Person:

Name:	Roger Ravenstad	Annabell Holland
Title:	Senior Landscape Architect	Director
Dept.:	Community Services	Community Services
Phone:	510-494-4723	510-494-4329
E-Mail:	rravenstad@fremont.gov	aholland@fremont.gov

RECOMMENDATION:

1. Find that the site (6900 Auto Mall Parkway, known as “the Municipal Parcel”) is in conformance with the Criteria for Selection of Park Sites included in the General Plan; and
2. Approve the purchase of the 40.1- acre Municipal Parcel site (APN 531-0185-012), depicted as Parcel A in Enclosure 3, from the Redevelopment Agency in the amount of \$4,372,117 and make related statutory findings; and
3. Appropriate the funds in the amount of \$4,372,117 to account 541PWC8758 for the acquisition of the property.

7.3 REDEVELOPMENT AGENCY ISSUANCE OF TAX ALLOCATION BONDS  
Re-Authorization to Issue 2011 Redevelopment Agency Tax Allocation Bonds

Contact Person:

Name:	Elisa Tierney	Harriet Commons
Title:	Redevelopment Agency Director	Director
Dept.:	Housing and Redevelopment	Finance
Phone:	510-494-4501	510-284-4010
E-Mail:	etierney@fremont.gov	hcommons@fremont.gov

RECOMMENDATION: Staff recommends that the City Council act as follows:

1. Approve the issuance and sale of the 2011 Tax Allocation Bonds.
2. Adopt a resolution approving the issuance and sale of tax allocation bonds of the Redevelopment Agency of the City of Fremont to finance redevelopment activities within or for the benefit of the Agency’s Fremont Merged Redevelopment Project.

7.4 FEDERAL GOVERNMENT RELATIONS CONTRACT

Authorize the City Manager to Enter into an Agreement with Holland and Knight, LLP to Provide Government Relations and Strategic Advice and Federal Advocacy for Efforts Related to the Development of the South Fremont/Warm Springs Area

Contact Person:

Name:	Lori Taylor	Fred Diaz
Title:	Director	City Manager
Dept.:	Economic Development	City Manager’s Office
Phone:	510-284-4024	510-284-4000
E-Mail:	ltaylor@fremont.gov	fdiaz@fremont.gov

RECOMMENDATION: Formally endorse the City Manager's recommendation to develop a government relations strategy and advocacy efforts for the development of the Warm Springs/South Fremont area, and authorize the City Manager to enter into an agreement with Holland & Knight, LLP in an amount not to exceed \$90,000.

**8. COUNCIL COMMUNICATIONS**

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

**9. ADJOURNMENT**



REPORT SECTION  
FREMONT CITY COUNCIL  
REGULAR MEETING

JUNE 7, 2011





**\*2.3 Second Reading and Adoption of an Ordinance of the City of Fremont Amending the Precise Plan for Planned District P-2005-131**

**ENCLOSURE:** [Draft Ordinance](#)

**RECOMMENDATION:** Adopt ordinance.

**\*2.4 ADOPTION OF A RESOLUTION APPROVING REVISIONS TO THE CITY  
FINANCE DEPARTMENT RETENTION SCHEDULE**

**Adoption of a Resolution Approving Revisions to the Finance Department  
Retention Schedule**

**Contact Person:**

Name:	Dawn G. Abrahamson	Mark Danaj
Title:	City Clerk	Assistant City Manager
Dept.:	City Clerk	City Manager
Phone:	510-284-4063	510-284-4005
E-Mail:	dabrahamson@fremont.gov	mdanaj@fremont.gov

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**Executive Summary:** In accordance with the provisions of the Records Management Program Policy adopted by the City Council on April 27, 2004 (Resolution No. 2004-24), staff continues its work to revise records retention schedules for all City departments. Council is being asked to approve changes that are required for the previously adopted (Version 2.0) Finance Department Retention Schedule.

**BACKGROUND:** Public agencies manage several types of records. Some serve historical purposes; some, such as contracts, are vital to the agency's business interests; and, others are routine documents used to conduct day-to-day business. Section 34090 et seq. of the Government Code defines some of the requirements for the management of records by the city governments in California. There are specific laws governing the retention and destruction of certain records based on the type of record. For certain other records, the agency may set its own schedules to meet its own business purposes or local public interests. The statutes provide that the City may avail itself of several alternative systems for managing its records programs. One alternative allows the City Council to delegate decisions regarding the retention and destruction of records to staff once a compliant Records Management Program Policy and a Records Retention Schedule for the various record types are in place. On April 27, 2004, the City Council adopted Resolution No. 2004-24, approving the Records Management Program Policy for the City of Fremont (hereafter referred to as the Policy), and authorizing the City Manager and City Clerk to oversee the management of the Records Management Program.

The Policy defines how records are to be maintained in compliance with the statutes and any specific directives of the Council relative to record keeping. An element of the Policy is a Records Retention Schedule (hereafter referred to as a Schedule). A Schedule is a comprehensive inventory of records under management by a city department. A Schedule describes each record type and a retention period for each type. Specific state or federal statutes that require certain minimum or maximum retention periods often define retention periods. Variations in the retention periods, as allowed by statute, are often recommended by staff to meet various public or business interests.

The Policy provides that departments are required to report to the City Clerk and the City Attorney on a periodic basis which records have reached the end of their retention periods, and request the destruction of those records. Once the City Clerk's Office and the City Attorney's Office validates that records proposed for destruction fit the appropriate definitions in the Retention Schedule and are due for destruction, they will approve the action and the documents will be destroyed. The Records Retention Schedule has been revised for the Finance Department. Revisions to the previously adopted schedule

(Version 2.0) assure compliance with retention regularities and facilitate administrative efficiency in addition to reorganizing the retention schedule, providing a new numbering system for the record series and revising retention dates to reflect same retention periods for similar type files. Over the next year and as the need arises, staff will return to Council with additional changes that are required to revise and amend original departmental Retention Schedules.

**Conclusion:** Staff is recommending that Council approve the revised Finance Department Retention Schedule.

**ENVIRONMENTAL REVIEW:** None.

**FISCAL IMPACT:** None

**ENCLOSURES:**

- [Draft Resolution](#)
- [Revised Finance Department Retention Schedule](#)

**RECOMMENDATION:** Adopt a Resolution approving revisions to the Finance Department Retention Schedule, and granting approval for the destruction of records in accordance with the Retention Schedule, subject to the review and consent of the City Attorney.

## **\*2.5 ADULT CROSSING GUARD CONTRACT**

### **Authorization for the City Manager, or his Designee, to Sign an Agreement with All City Management Services for the Purpose of Providing Adult Crossing Guard Services Throughout the School Year**

#### **Contact Person:**

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**Executive Summary:** On May 15, 2008, the City Council authorized the City Manager to enter into an agreement with All City Management Services (ACMS) for the purpose of providing adult crossing guard services at specified elementary and junior high schools throughout the school year. The contract is due to expire on June 30, 2011. After receiving two bids from contractors in response to RFP (12-002), All City Management, the current provider, was the lowest bidder. Staff recommends awarding the new three-year contract to All City Management Services to provide adult crossing guard services. During the past three years, All City Management Services has provided exceptional service to the community and has worked well with City staff. Awarding the new three-year contract to All City Management Services would ensure the current level of performance and efficient crossing guard services until the end of the 2014 school year.

**BACKGROUND:** The City's Adult Crossing Guard Program was outsourced to All City Management Services in 2001 in order to reduce the amount of Police staff time required to manage and supervise the crossing guard program. Since 2001, ACMS has provided outstanding services for the community by safely crossing school-aged children walking to and from school. Services provided by ACMS include the recruiting and hiring of crossing guards, training, processing payroll, providing crossing guard coverage, daily supervision of the crossing guards, and overall management of the program. The Police Department has oversight responsibilities and is the focal point for any issues that may arise.

**DISCUSSION/ANALYSIS:** In April 2011, a Request for Proposal was issued for adult crossing guard services (RFP#12-002). Two vendors responded with quotes to provide the required services, ACMS and World Private Security. ACMS has over ten years of experience with the crossing guard program in Fremont. ACMS is responsive when issues arise and works well with City staff. ACMS guards are fully trained and have experience managing traffic to safely guard students as they cross the streets. ACMS lists six local agencies that are currently utilizing their crossing guard services. ACMS is strictly a crossing guard contractor and is serving over 130 cities, counties, and school districts.

World Private Security has no experience with the crossing guard program and would need to train their security personnel to perform crossing guard services. World Private Security did not list any law enforcement agencies where they are currently performing crossing guard services. World Private Security mainly provides security work, not crossing guard services.

The following hourly rates were submitted by the potential vendors:

Contractor	Hourly Rate Year One	Hourly Rate Year Two	Hourly Rate Year Three	Annual Costs	Total Cost of the Contract
ACMS	\$14.49	\$14.49	\$14.49	\$165,693.15	\$497,079.45
WPS	\$16.87	\$16.87	\$17.21	\$192,908.45 (years 1&2) \$196,796.35 (year 3)	\$582,613.25

**FISCAL IMPACT:** ACMS was the lowest bidder at an hourly rate of \$14.49 per crossing guard. Annual costs will be \$165,693.15 (11,435 hours X \$14.49). The three-year cost of the contract will be \$497,079.45, funded from the Police Department operating budget. The proposed contract includes a contingency for additional hours; however, the contract amount shall not exceed \$175,000 per fiscal year.

**ENVIRONMENTAL REVIEW:** N/A

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager, or his designee, to execute a contract to award adult crossing guard services to All City Management Services in an amount not to exceed \$175,000 per year for a three-year term.

## **\*2.6 PARTICIPATION IN THE SAN FRANCISCO PRIDE PARADE**

### **Authorization for the City Manager to Enter into an Agreement with the San Francisco Pride Celebration Committee to Allow the City to Officially Participate in the Pride Parade**

#### **Contact Person:**

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**Executive Summary:** Staff is recommending that the City Council authorize the City Manager to enter into an agreement with the San Francisco Lesbian, Gay, Bisexual, Transgender Pride Celebration Committee, Inc. (SF Pride Celebration Committee), in order for the Human Relations Commission and other residents to participate, and officially represent the City, in the San Francisco Pride Parade. The proposed agreement requires proof of liability insurance in the amount of \$500,000 per claim and \$1,000,000 in the aggregate. The former amount falls within the City's self-insured retention (SIR), and in order to commit the City's SIR and provide a letter evidencing self-insurance, authorization from the City Council is necessary as this amount exceeds \$100,000. The agreement also requires the City to assume any liability for and waive damages incurred in connection with the City's participation in the parade, as described below.

**BACKGROUND:** On March 24, 2011, the City of Fremont Human Relations Commission directed staff to explore the logistics of entering the City of Fremont as an official entry in the San Francisco Pride Parade, which is scheduled for June 26, 2011. The Commission also voted, as it has in years past, to recommend that the City Council adopt a resolution recognizing June as Pride Month. This resolution is included in this Council Agenda as an accompanying ceremonial item.

This year marks the 41<sup>st</sup> anniversary of the San Francisco Pride Celebration and Parade. While this would be the first year the City of Fremont officially participates, in past years HRC members, other City officials, and Fremont residents have participated in the parade. Other Bay Area public entities and agencies participate on a regular basis. Participants walk or ride for approximately one mile along Market Street in San Francisco. Staff anticipates that up to 100 Fremont residents may participate in the parade as part of the City's parade contingent. Two Commissioners have volunteered their automobiles to be part of the parade contingent. Both Commissioners have the required personal automobile insurance. In accordance with parade guidelines, the Fremont contingent will have trained safety monitors walk the entire parade route.

**DISCUSSION/ANALYSIS:** In order to participate in the parade, the SF Pride Committee requires the City to enter into a contract. The contract requires the City to provide proof of liability insurance in the amount of \$500,000 per claim and \$1,000,000 aggregate and name the San Francisco Lesbian, Gay, Bisexual, Transgender Pride Celebration Committee, Inc., and City and County of San Francisco as additional insureds. The former amount falls within the City's Self Insured Retention (SIR). In order for staff to commit the City's SIR and provide a letter evidencing self insurance, the City Council must

authorize the City Manager to sign the contract, as the SIR exceeds the \$100,000 of contracting authority delegated to the City Manager under Fremont Municipal Code section 2-9202.

The contract states that in the event the parade committee is held liable for any claims from the City's participants, the City must indemnify, defend and hold the committee harmless for such claims. The contract also states that the committee is not responsible for any damages whatsoever, or alternatively limits any liability to the amount of fees paid, in this case \$555. The agreement further requires the waiver of damages sought under specific types of claims such as for personal injury or property damage. The parade committee has indicated that the terms of the agreement are not subject to negotiation.

**FISCAL IMPACT:** The cost of participating in the parade is \$555.00. Sufficient appropriations are available to fund this cost.

**ENVIRONMENTAL REVIEW:** None

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager to enter into an agreement as described in the staff report with the San Francisco Lesbian, Gay, Bisexual, Transgender Pride Celebration Committee Inc. (SF Pride Celebration Committee), in order for the Human Relations Commission and other residents to participate, and officially represent the City, in the San Francisco Pride Parade.

**\*2.7 CONSTRUCTION MATERIALS TESTING CONSULTANT SERVICES CONTRACT FOR 2011**

**Award Contract for Construction Materials Testing Consultant Services for 2011 Asphalt Overlay Project and Phase I of the Beacon Avenue, California Street and Walnut Avenue Project to Kleinfelder West, Inc.**

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**Executive Summary:** The purpose of this report is to recommend that City Council award a contract to Kleinfelder West, Inc., for construction materials (soil, aggregate subbase and base, asphalt and concrete) testing consultant services for two specific federally funded projects:

- The 2011 Asphalt Overlay Project.
- Phase I of the Beacon Avenue, California Street and Walnut Avenue Project (formerly called the “Midtown Catalyst Project”).

In April 2011, the City issued a Request for Proposals for Asphalt and Concrete Materials Testing Consultant Services for these projects. A total of three (3) consultant proposal packages; were received and evaluated by staff. Based on the results of that evaluation, staff recommends that City Council award the contract for asphalt and concrete materials testing consultant services to Kleinfelder West, Inc., in an amount not to exceed \$150,000.

**BACKGROUND:** The asphalt and concrete materials testing consultant services contract is used for services for which the City does not currently have the personnel, expertise or equipment to perform in-house. To obtain the full design service life of public works projects, the task of controlling material quality is receiving increased attention at all levels of government. Due to the greatly increased use of rubberized hot mix asphalt (RHMA), and in recognition of the need for better quality control of all asphalt materials, Caltrans has recently completely rewritten the specifications for RHMA and the more traditional hot mix asphalt (HMA) material. The City of Fremont’s latest construction contract specifications include these updated material specifications that place far more emphasis on testing for quality control by contractors and testing for acceptance by agencies. In recognition of obtaining the greatest overall economy in pavement rehabilitation projects, it is acknowledged that the more rigorous materials acceptance requirements have increased City expenditures for materials testing consultants.

In the past, the City used on-call contracts for materials testing consultants. Due to the size of the asphalt overlay and the Beacon Avenue, California Street and Walnut Avenue projects and the additional acceptance testing requirements, staff has determined that use of a project-specific materials testing consultant will be more cost effective and facilitate the materials acceptance and documentation process for these projects.



The primary scope of the materials testing consultant's work is as follows:

- 1) Under the supervision of City construction staff, evaluate the source and quality of aggregate base and aggregate subbase materials before delivery to project sites.
- 2) Observe structural backfill placement and perform compaction testing for storm drain installation in City rights-of-way.
- 3) Perform plant inspections of the HMA and RHMA production before it is delivered to the project overlay street sites.
- 4) At the project overlay street sites, observe field conditions and perform field sampling of HMA, RHMA and concrete materials.
- 5) Perform laboratory testing of materials and provide prompt reporting of test results to the City.
- 6) Provide a summary report of the materials testing performed for both projects.

The City's HMA, RHMA and concrete inspection and testing services for the 2008 and 2009 asphalt overlay projects were provided by Kleinfelder West, Inc. In addition, the 2010 overlay, which was delayed by cool weather last fall, will be underway in late May 2011, and Kleinfelder West, Inc., is under contract for materials testing on this significant project. The value of Kleinfelder West, Inc.'s services, used in an on-call capacity for the 2009 asphalt overlay project, amounted to \$275,000 for this type of work. The contract value for the 2010 project is \$210,000. Kleinfelder West, Inc., has performed materials testing consulting services on several other City projects in the past.

**DISCUSSION:** In April 2011 the City issued a Request for Proposals for HMA, RHMA and concrete material testing consultant services. A total of three (3) proposal packages were received from the following consultant firms:

- Kleinfelder West, Inc.
- Construction Testing Services
- Engeo Incorporated

One other firm was solicited for this work, but declined to submit a package due to the lack of staff needed to fulfill this type of contract. An evaluation panel comprised of City staff reviewed all firms based on the proposals submitted. Consultants were ranked based on the following criteria:

- Overall and local project experience on similar contracts
- Understanding of the City's project needs and requirements
- Key staff members and their availability
- The overall quality of the submittal package

The result of the evaluation showed Kleinfelder West, Inc., ranked as the top firm. Kleinfelder West, Inc., is experienced in this type of work, and has satisfactorily provided HMA, RHMA concrete and other construction materials testing consultant services on recent City projects. Additionally, after the qualifications ranking it was determined that Kleinfelder West was the lowest cost, not qualified proposer.

Staff recommends contracting for the material testing consulting services with Kleinfelder West, Inc. The contract would be awarded in a not to exceed amount of \$150,000.

**FUNDING:** The work performed under the HMA, RHMA and Concrete Material Testing Consultant Services contract will be funded on a pro-rata basis by the Asphalt Overlay Project, PWC 8234, and the Phase I - Beacon Avenue, California Street and Walnut Avenue Project, PWC 8749. Sufficient funding for these services has been included in the project budgets.

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager or his designee to execute a Master Service Agreement with Kleinfelder West, Inc., for construction materials testing consultant services for the 2011 Asphalt Overlay and the Phase I - Beacon Avenue, California Street and Walnut Avenue projects in an amount not to exceed \$150,000.

**\*2.8 FINAL MAP FOR TRACT 8049 AND IMPROVEMENT AGREEMENT - PLANNING AREA 5, PACIFIC COMMONS - CATELLUS LAND AND DEVELOPMENT CORPORATION**

**Approval of Final Map for Tract 8049 and Improvement Agreement for Planning Area 5 Tract 8049 for the Construction of Public Streets (Bunche Drive and Pacific Commons Boulevard) and Dedication of Land and Public Easements - Pacific Commons**

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**Executive Summary:** The purpose of this report is to recommend that the City Council approve Final Map 8049, authorize the City Manager to execute an agreement for construction of public streets for Tract 8049, and accept the dedications of public streets and easements subject to improvement.

**BACKGROUND:** Tract 8049 is designated as Planning Area 5 within the Pacific Commons development. It is bordered to the north by Curie Street, to the south by Bunche Drive, to the east by Christy Street and to the west by Boscell Road. The project is part of Pacific Commons Planned District P2000-214, previously approved by City Council on May 9, 2000, and amended on July 22, 2003 (PLN2003-00166) and November 23, 2010 (PLN2010-00221). The Major Amendment approved by the City Council on November 23, 2010 allowed for the following: 1) the creation of a 321,000-square foot retail/entertainment district within Planning Area 5; 2) modification of Pacific Commons' circulation plan to create an urban internal public street for a segment of Pacific Commons Boulevard between Curie Street and Bunche Drive; 3) a zero-setback specific for Planning Area 5 for buildings along Pacific Commons Boulevard; and 4) a parking reduction in accordance FMC Section 8-22003 based on the proposed land uses and their different peak parking characteristics for Planning Area 5.

**DISCUSSION/ANALYSIS:** This project is a 10-lot subdivision with street improvements on Pacific Commons Boulevard, Bunche Drive and Christy Street. The common areas created by the subdivision will be maintained by the Pacific Commons Property Owners Association or Catellus Land and Development Corporation.

The developer has signed Improvement Agreements and posted bonds to guarantee construction of street improvements on Pacific Commons Boulevard, Christy Street and Bunche Drive and all other necessary public improvements. The bond amounts for construction of the public improvements are \$5,626,000 for the faithful performance of the agreement and \$5,626,000 for payment of labor and materials, based on preliminary cost estimates.

The final map has been checked and is in general conformance with Vesting Tentative Tract Map 8049 (PLN2011-00221), previously approved by the Planning Commission on November 23, 2010. A previous final parcel map (Parcel Map 9991) was approved by the City Engineer for the creation of Parcel 1 of Vesting Tentative Tract Map 8049 to facilitate the sale of the parcel to Target. Parcel Map

9991 also dedicated the northern half of the right-of-way necessary for the required street improvements on Bunche Drive between Boscell Road and Christy Street. The southern half of the required right-of-way for Bunche Drive has been dedicated by the adjacent land owner (Cisco Technologies, Inc.) and accepted by the City. The final map is consistent with the intent of the Planned District conditions and the Development Standards and Guidelines for Pacific Commons, and is ready for City Council approval. The civil engineer for the project is JMH Weiss and, as noted above, the developer is the Catellus Land and Development Corporation.

**FISCAL IMPACT:** There is no impact to the City. All improvements will be paid for by the developer.

**ENVIRONMENTAL REVIEW:** The City Council adopted the 2010 Supplement to the Final Environmental Impact Report for Pacific Commons (hereinafter “2010 Supplement”) and the 2010 Addendum to the Pacific Commons Mitigation Monitoring and Reporting Program (hereinafter “2010 MMRP Addendum”) on November 2, 2010. The 2010 Supplement identified and analyzed two additional impacts on regional air quality and greenhouse gas emissions. Mitigation measures that would reduce the identified impacts were identified by the 2010 Supplement; however, it was determined that with implementation of the mitigation measures, the identified impacts would remain significant and unavoidable. The Final Map and improvement plans are consistent with the original project description, scope of work, and identified mitigations of the adopted 2010 Supplement. No further environmental review is required.

**ENCLOSURES:**

- [Draft Resolution](#)
- [Site Plan](#)

**RECOMMENDATION:** Adopt a resolution:

1. Approving the final map and the improvement plans for Tract 8049.
2. Approving the Agreement for Public Street Improvements entitled, “Improvement Agreement Public Street Improvements Tract 8049”, with the developer, Catellus Land and Development Corporation, and authorizing the City Manager to execute the agreement on behalf of the City.
3. Accepting the developer’s offer of dedication of land, as identified on the final map, provided that the acceptance of the offer of dedication of land for any public improvements shall be conditioned upon the developer’s completion of improvements to the satisfaction of the City Engineer.

**\*2.9 NILES BOULEVARD BRIDGE REPLACEMENT PROJECT APPROPRIATION**  
**Appropriate Highway Bridge Program (HBP) Funds in the Amount of \$448,000 to the**  
**Niles Boulevard Bridge Replacement Project over BART/UPRR, City Project No.**  
**8460(PWC)**

**Contact Person:**

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**Executive Summary:** The purpose of this report is to recommend that the City Council appropriate Highway Bridge Program (HBP) funds in the amount of \$448,000 for engineering of the Niles Boulevard Bridge Replacement over BART/UPRR, City Project No. 8460(PWC).

**BACKGROUND:** The Niles Boulevard Overhead Bridge that crosses over BART and the Union Pacific Railroad tracks at the north end of Niles needs to be seismically retrofitted. However, due to unacceptably high construction costs and long closures of the existing bridge associated with retrofitting the bridge, it was determined that a parallel replacement bridge should be pursued. The replacement of the bridge with a parallel structure, to be followed by demolition of the existing bridge, allows for a better use of public funds and requires only a few days of bridge closure versus several months with the retrofit.

**DISCUSSION/ANALYSIS:** In March 2010, the City received approval for \$448,000 of Highway Bridge Program (HBP) funds from Caltrans and the Federal Highway Administration (FHWA), to be used for consultant design services as well as additional staff time to complete engineering for the Niles Boulevard Bridge Replacement project. These funds now need to be appropriated to the project and will supplement existing State and federal funds and City gas tax funds previously appropriated to the project.

The current schedule calls for engineering to be completed this summer and construction to begin next year. The City is in line to receive an additional \$7.5 million of federal Highway Bridge Program funds to pay for the construction of the new bridge. The new bridge is scheduled to be completed in 2014.

**FISCAL IMPACT:** The HBP funds have a 20% local match. The required local match in the amount of \$112,000 will be from Gas Tax Fund 132 that was previously appropriated and currently resides in the project budget, PWC8460. There are sufficient funds in this project to cover the match.

**ENVIRONMENTAL REVIEW:** An Initial Study and Draft Mitigated Negative Declaration (PLN2002-00290) were prepared and circulated for the project and found there is no evidence the project would have any potential for adverse effect on wildlife resources. City Council adopted the draft mitigated negative declaration and approved the mitigation monitoring plan at the September 9, 2003 City Council meeting.

A Categorical Exclusion (CE) with technical studies was prepared and the State determined that the project does not individually or cumulatively have a significant impact on the environment as defined by the National Environmental Policy Act (NEPA) and is excluded from the requirements to prepare an Environmental Assessment or Environmental Impact Statement. On November 7, 2007, the Department of Transportation along with the Federal Highway Administration (FHWA) determined that the Niles Boulevard Bridge Replacement project will have no significant impact on the environment.

No changes to the project or its circumstances have occurred and no new information has become available since the adoption of the mitigated negative declaration and the approval of the Categorical Exclusion that would require preparation of additional environmental documentation.

**ENCLOSURE:** None

**RECOMMENDATION:** Appropriate HBP Funds in the amount of \$448,000 to 522PWC8460 (Niles Boulevard Bridge Replacement over BART/UPRR).

**\*2.10 PASEO PADRE PARKWAY STREET LIGHT POLE REPLACEMENT PROJECT**  
**Accept the Highway Safety Improvement Program (HSIP) Grant and Appropriate the**  
**Grant Funds of \$143,370 to the Paseo Padre Parkway Street Light Pole Replacement**  
**Project between Walnut Avenue and Washington Boulevard, City Project No. 8756(PWC).**

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**Executive Summary:** The Caltrans Division of Local Assistance invited local agencies to submit applications for the Cycle 3 Highway Safety Improvement Program (HSIP) funds in October 2009. Staff responded by submitting two applications in the amount of \$286,740 to replace the concrete street light poles (electroliers) on Paseo Padre Parkway between Walnut Avenue and Washington Boulevard and between Siward Drive and Fremont Boulevard. The project will remove the existing concrete electroliers and replace them with the City standard aluminum electroliers. The City was successful in securing the grant for the application between Walnut Avenue and Washington Boulevard in the amount of \$143,370. In order to initiate this project, staff recommends that the City Council authorize the City Manager or designee to accept the HSIP grant funds, execute any associated documents, and authorize staff to begin design on the Paseo Padre Parkway Electrolier Replacement Project between Walnut Avenue and Washington Boulevard (PWC8756).

**BACKGROUND:** The Highway Safety Improvement Program (HSIP) was elevated to a core program as a result of the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), replacing the previous Hazard Elimination Safety (HES) Program. HSIP funds are eligible for use on any safety improvement project on a public road and pedestrian-bicycle path or trail.

**DISCUSSION/ANALYSIS:** The Caltrans Division of Local Assistance issued the call for projects under this program in September 2009 for the 2009/10 Cycle 3 HSIP Plan. Staff responded to the call for projects by submitting two applications for a total of \$286,740 to design and replace the concrete electroliers on Paseo Padre Parkway between Walnut Avenue and Washington Boulevard and between Siward Drive and Fremont Boulevard. Staff was successful in securing the grant for Paseo Padre Parkway between Walnut Avenue and Washington Boulevard for \$143,370.

Decorative concrete street light poles were installed on Paseo Padre Parkway between Siward Drive and Curtner Road when the street improvements were constructed. Staff believes that replacing the concrete electroliers with aluminum electroliers will improve safety by potentially reducing the severity of injuries and possibility of fatalities when collisions with poles occur. The scope of this Cycle 3 HSIP grant project is to replace 15 of these concrete poles between Walnut Avenue and Washington Boulevard.

Staff was notified of the City's successful application for Cycle 3 HSIP funds. The HSIP grant will fund up to 90 percent of the project cost and requires a 10 percent local match. There are sufficient gas tax funds previously allocated to the Paseo Padre Electrolier Replacement Project (PWC8293) that will be used for the 10 percent local match of \$15,930. In order to initiate this project, staff recommends that the City Council authorize the City Manager or designee to accept the HSIP grant funds and execute any associated documents, and authorize staff to begin design on the Paseo Padre Parkway Electrolier Replacement Project between Walnut Avenue and Washington Boulevard (PWC8756).

**FISCAL IMPACT:** The required local match in the amount of \$15,930 for this HSIP grant will be funded with Gas Tax, Fund 142.

**ENVIRONMENTAL REVIEW:** Appropriate environmental review will be conducted prior to completion of the design work.

**ENCLOSURE:** None

**RECOMMENDATION:**

1. Authorize the City Manager or designee to accept the HSIP grant and to execute any associated grant documents.
2. Appropriate funds in the grant amount of \$143,370 to 522PWC8756 (Paseo Padre Electrolier Replacement – Walnut to Washington).
3. Transfer funds in the amount of \$15,930 from 142PWC8293 (Paseo Padre Electrolier Replacement) to 142PWC8756 (Paseo Padre Electrolier Replacement – Walnut to Washington).



**\*2.11 DRISCOLL ROAD HOMES (ALSO KNOWN AS THE ADVENTIST/ROBSON SUBDIVISION) – 225 DRISCOLL ROAD**

**Consideration of Planning Commission Recommendation to Introduce an Ordinance Adopting a Precise Planned District (P-2010-280), and to Approve a Preliminary Grading Plan, Private Street, Variance for a Modified Public Street, and Vesting Tentative Tract Map 8052 to Develop a 9-lot Single-Family Residential Subdivision on a Vacant Portion of the Seventh-Day Adventist Church Property. (PLN2010-00280)**

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**Executive Summary:** The applicant is requesting approval of a nine-lot single family residential development located on a vacant 2.50-acre portion of a 3.99-acre parcel currently owned and occupied by the Seventh-Day Adventist Church. The proposed development requires approval of a rezoning to a Planned District, and a Vesting Tentative Tract Map, Preliminary Grading Plan and Private Street, , as well as a variance to allow a modified street section for a new public cul-de-sac. The church owns two contiguous properties, both of which will be included within the Planned District (PD). The church will be allowed to continue operating as a religious facility under its previously approved Conditional Use Permit. Staff recommends that the City Council introduce an ordinance rezoning the subject property and adopting the Precise Planned District as shown in Exhibit “C”, and approve the Vesting Tentative Tract Map, Private Street, Modified Public Street and Preliminary Grading Plan as shown in Exhibit “D”, based on the findings and subject to the conditions of approval contained in Exhibit “F”.

On April 12, 2011 the City Council considered a last-minute revision to the project by the applicant featuring a hybrid public/private street design. Council expressed support of this new street design concept and directed staff to work with the applicant on finalizing the details of its design. This staff report has been re-written to reflect the new hybrid public/private street design that was presented to the Council by the applicant on April 12.

**BACKGROUND:** The subject property was used as an orchard from as early as the 1930’s through the early 1980’s, with the farmhouse being located where the present-day church now sits. On April 12, 1984, the Planning Commission approved Conditional Use Permit U-84-9 allowing the Northern California Conference Association of Seventh-Day Adventists to construct a religious facility with an associated parochial school on the property. Construction of the facility was eventually completed in 1987, and the property has been used for religious and educational purposes by the Seventh-Day Adventists ever since.

**DISCUSSION/ANALYSIS:**

*Project Description:* The applicant proposes to rezone two parcels totaling 5.0-acres to a new PD in order to develop a 9-lot single-family residential subdivision on a vacant portion of the property. The project would feature nine parcels ranging in size from 8,007 to 11,079 square feet accessed via a new

public cul-de-sac and private street leading from Driscoll Road along the eastern side of the Seventh Day Adventist Church, and ending in a private cul-de-sac behind the church. The private street will be a separate parcel under the ownership of the subdivision's Homeowners Association (HOA), while the public cul-de-sac will be dedicated as public right-of-way to the City. The proposal features two-story house plans ranging in size from 4,052 to 4,326 square feet with 4-6 bedrooms each, with the largest house plan having an optional 7<sup>th</sup> bedroom. Three-car garages would be provided for all nine homes.

The units will be oriented toward the private street and will each have their own curb cut and driveway. Due to its irregular shape caused by the bulb at the end of the cul-de-sac, Lot 3 is proposed to have a detached garage with a 1-bedroom guest house on a 2<sup>nd</sup> floor over the garage. All of the other units would feature attached garages. Yard sizes on each lot would be relatively uniform, with 20-25 foot front setbacks, 25-foot rear setbacks, and 8-10 foot side setbacks on most parcels except those fronting along the cul-de-sac bulb. The PD includes deviations for front and rear yard setbacks for the dwelling units, accessory structure height and setbacks for the detached garage and guest house, and side yard setbacks for the existing church building. There are 8 existing Coast Live Oak trees on site that would be preserved in the rear yards of Lots 5 and 6. Lots 4 and 5 located at the end of the private street would both have permanent on-site bio-retention areas for stormwater treatment. All stormwater treatment for the runoff from the public cul-de-sac would occur through tree well filters located within the cul-de-sac or through alternative compliance using off-site treatment measures.

As part of the project, the applicant would be required to construct the new public cul-de-sac with accessible curb ramps at the intersection of Driscoll Road and a sidewalk alongside the existing church. The existing driveway from Driscoll Road into the church parking lot would be removed and replaced with a new entrance directly off the new public cul-de-sac. The developer will also make modifications to the church parking lot to accommodate this new access point. The proposed private street features monolithic (attached) sidewalks along both sides of the street, while the public cul-de-sac features a monolithic sidewalk with street trees and tree well stormwater filters provided in bulb-out planters along the side of the street adjacent to the church. The opposite side of the cul-de-sac alongside the church will feature landscaping and a curb and gutter to channel stormwater into the storm drain system, but no sidewalk or street tree bulb-outs. The provision of a public cul-de-sac in this location will enable future development of the adjacent property at 151 Driscoll Road to share access to Driscoll via this cul-de-sac.

*General Plan Conformance:* The existing General Plan land use designation for the project site is Low Density Residential 3-5 Dwelling Units per Acre. The proposed density of the project is 4.15 units per acre, consistent with the prescribed density of the General Plan. In addition, the proposal is consistent with the following goals of the Land Use, Health and Safety, and Housing Elements of the General Plan:

**Land Use Goal 1:** New housing development while conserving the character of the City's existing single-family residential neighborhoods.

**Housing Element Goal 2:** Ensure the availability of high quality, well-designed and environmentally sustainable new housing of all types throughout the City.

**Housing Element Goal 3:** Encourage the development of affordable and market-rate housing in order to meet the City's assigned share of the regional housing need.

**Transportation Policy T 1.2.2:** Limit access to parkways and arterials to maintain capacity, efficiency, and safety of traffic flow.

Analysis: The project makes use of vacant property located within an area zoned for single-family residential development, and features single-family lots similar in size to the existing parcels abutting the project site to the north and east. The homes would be between 1,000-2,000 square feet larger than the abutting homes to accommodate larger and/or extended families, but would be of similar height and feature ample rear yards with 25-foot ground-floor setbacks and 30-foot setbacks on the second floor. The proposed height and mass of the units are similar in scale to the existing homes abutting the property, so the project will not significantly alter the existing character of the neighborhood.

The construction of a new public cul-de-sac as proposed also ensures that the most logical street system is established for development of both the project property and the adjacent land (in this case, the property located next-door at 151 Driscoll Road) in a manner consistent with the Transportation Chapter by providing shared access to an arterial road via the new cul-de-sac.

*Affordable Housing Ordinance:* The affordable housing requirement for a 9-unit development is 1.35 units which equates to the provision of one on-site moderate income unit and payment of in-lieu fees for the remaining 0.35 fractional unit. In order to comply with the Affordable Housing Ordinance, the applicant is proposing an alternative affordable housing plan. The plan proposes the purchase of two off-site market-rate condominium units located within 1 mile of either the Fremont BART station or the Centerville Amtrak/ACE Train station for conversion to below-market-rate (BMR) units and offering them to very low income households for a price of \$89,000.00, in lieu of the standard requirement. Both units will contain 3 bedrooms. The applicant proposes to refurbish both units, spending up to \$25,000 per unit. In addition, the developer will contribute \$17,800 to a City fund for emergency repairs for the homeowners' benefit, and \$8,900 to assist with marketing and other "soft costs" associated with the sale of the units as BMR units by City staff. In the event that this proposal does not prove economical or the applicant can not find available units, the applicant would like the option of opting to pay in-lieu fees for 1.35 units in order to satisfy the requirements of the ordinance.

Analysis: Based upon the proposed average unit size of 4,229 square feet and a payment of \$18.00 per square foot (the in-lieu fee that will be in effect between 7-1-2011 and 6-30-2012 when the applicant will most likely be able to obtain building permits for the project), payment of in-lieu fees for a 9-unit residential development would amount to approximately \$685,116.00. The estimated costs for implementing the applicant's proposed plan are as follows:

Acquisition:	\$500,000 (\$250,000 for each unit)
Rehabilitation:	\$ 50,000 (\$25,000 for each unit)
Emergency funds:	\$ 17,800 (10% of proposed sales price of each unit at \$89,000)
<u>Marketing/Sales:</u>	<u>\$ 8,900 (5% of proposed sales price of each unit at \$89,000)</u>
Subtotal Cost:	\$576,700

While these dollar figures may vary, the applicant is proposing to meet very low income affordability levels in lieu of moderate-income, and the plan will result in foreclosed units being removed from the inventory of units in the marketplace, thereby helping to sustain local housing values. For these reasons, staff supports the plan as proposed.

The initial consideration for allowing the foreclosed unit option was to put people in need of affordable housing into housing in areas where services and amenities exist and access to transit can reduce the need for automobiles and their associated maintenance costs. Finally, there was a hope that taking foreclosed units off the market might reduce blight in neighborhoods where foreclosures were frequent. This may be possible in some instances where single-family homes are purchased, but it is less likely in condominium developments wherein a homeowner's association typically maintains common grounds, parking facilities, and building exteriors.

*Green Building Practices:* As a new residential project, the proposal is required to either achieve a minimum of 50 points on the Build-It-Green checklist or be built in compliance with the Tier 1 standards of the California Green Building Code made mandatory by local amendment. Staff will ensure compliance with this requirement during the building permit review process.

*Zoning Ordinance Compliance:* The subject property is currently zoned R-1-10, Single-Family Residence, a designation that typically accommodates the lower end of the General Plan density range. The applicant is proposing to rezone the property as a new Precise Planned District for 9 single-family dwelling units at a density of 4.15 Dwelling Units per Acre consistent with the density prescribed by the General Plan.

*Building/Site Design:* The project has been designed in a manner most closely resembling the R-1-8, Single-Family Residence zoning designation in order to be consistent in size and scale with the adjacent homes abutting the project site to the north comprising a 1976 PD that also has an underlying zoning of R-1-8. The following table shows how the proposal conforms to the development standards for new residential development in the R-1-8 zone:

<i><b>Standard</b></i>	<i><b>Requirement</b></i>	<i><b>Proposed</b></i>	<i><b>Complies?</b></i>
Minimum Lot Size	8,000 sq. ft.	min. 8,007 sq. ft.	Complies
Minimum Lot Width	70 feet	min. 80 feet	Complies
Minimum Lot Depth	100 feet	min. 100 feet	Complies
Front Yard Setback	25 feet	7 feet - 40 feet	Eight lots do not comply, the other one complies
Rear Yard Setback	30 feet	min. 20 feet on one irregular lot, all others 25 feet	None of the lots comply
Interior Side Yard Setback	8 feet	8 feet	Complies
Street Side Yard Setback	12½ feet	15 feet	Complies
Primary Structure Height	30 feet	max. 25 feet 4 inches	Complies
Accessory Structure Height	12 feet	23 feet 4 inches	Does not comply
Secondary Unit Rear Setback	30 feet	3 feet	Does not comply
Religious Facility Side Yard Setback	25 feet	±3 feet	Does not comply

As this table shows, the project varies from five of the applicable R-1-8 standards: (a) front yard setback; (b) rear yard setback; (c) accessory structure height limit for the two-story detached garage and guest house proposed on Lot 3; (d) rear yard setback for a secondary unit; and (e) side yard setback for a religious facility. Adoption of the proposed Precise Site Plan as part of the PD approval would enable these variations as long as the decision-making body finds that the precise plan fosters a desirable residential neighborhood environment while still meeting the intent of the City's standards.

Staff supports the proposed variations to the front setback requirement on the grounds that allowing the reduced front yards would provide for ample usable private outdoor open space in the rear yards of each lot. The front yards are relatively consistent along the cul-de-sac and will maintain a single-family residential character throughout the development despite their slight reductions. Staff also supports the variations to the rear yard setback requirement on the grounds that they would enable the applicant to provide a standard-width street with on-street parking and sidewalks on both sides to provide a safe environment for pedestrians and convenience for visitors who drive to the subdivision, as no on-street parking currently exists along the adjacent stretch of Driscoll Road. It should also be noted that the first floors of each house backing up to the existing homes behind the subdivision along Jacaranda Drive comply with the 25-foot single-story setback of the R-1-8 zone while the second floors comply with the 30-foot setback for two-story homes.

Allowing a two-story accessory structure in its proposed location on Lot 3 with only a 3-foot side and rear setback would in this case not adversely impact the privacy of any neighboring properties to the rear in that the land behind the lot would remain under the church's ownership and continue to be used as surplus parking by the church. The property next-door to the structure (Lot 4) would feature an extra-wide side yard to accommodate a 20-foot wide water line easement as well as a bio-retention area for stormwater treatment; therefore, the proposed 3-foot side yard setback for the structure would not adversely impact the privacy of Lot 4's occupants either.

While the applicant is not currently proposing to equip the 2<sup>nd</sup> floor guest house with a kitchen and market it is as a secondary dwelling unit, in an effort to preclude an illegal conversion of the unit by a future property owner staff has included a condition of approval allowing it to have a kitchen and be used as a secondary unit. Second-floor secondary dwelling units are subject to the same rear yard setback as the main house; therefore the unit would need to have a 30-foot setback. However, staff supports the proposed variation on the same grounds as those opined for the height limit variation: allowing a second-floor secondary unit at the proposed location within the rear yard setback would not adversely impact the adjacent property in that the land behind the unit would remain under the church's ownership and only be used for surplus parking.

Finally, staff supports the reduced setback for the church building from the proposed public cul-de-sac because it will still remain separated from the adjacent property by the same distance as the existing condition (approximately 40 feet), while leaving adequate room for a full two-lane street and sidewalk on the property. Furthermore, the property currently does not afford any other locations for access to the area being subdivided because the church's various improvements, coupled with a number of existing easements benefiting some neighboring parcels, effectively block off the home sites from Driscoll Road. As such, the proposed location of the new cul-de-sac is the most feasible location to provide access despite its proximity to the existing building.

*Parking:* Parking for the project would comply with (and, on some of the lots, exceed) the minimum requirements for new single-family residential development with each unit containing a 3-car garage. On-street parking for guests will also be provided on both sides of the street fronting the lots, and along the western side of the street alongside the existing church.

*Design Analysis:*

*Site Planning:* The proposed subdivision design takes access via a new public cul-de-sac located off Driscoll Road with the units constructed in two parallel rows fronting along both sides of a private street at the end of the cul-de-sac. Lots 1-3 and 6-9 will have their homes oriented toward the private street, while Lots 4 and 5 at the end of the street will have their homes siding along the street. Each home will have its own curb cut and driveway. Guest parking is provided in front of the units along both sides of the street, as well as along the new public cul-de-sac on the side of the street closest to the church.

*Architecture:* The single-family homes feature three different floor plans. The architectural style of the project is Spanish Colonial Revival, with elements such as low-pitched hip and gabled red tile roofs and smooth stucco siding, and the use of decorative exterior detailing, including wood window shutters, decorative metal grillwork and balcony railings, and arched portico porch covers. Staff will work with the developer during building permit stage to achieve a comprehensive final colors/materials palette for the project.

*Open Space/Landscaping:* With the exception of Lot 3, all of the lots would be provided a minimum of 2,000 square feet of private outdoor space in the rear yard. Because of its odd shape resulting from its location along the cul-de-sac knuckle, Lot 3 would only have a  $\pm 1,750$  square foot rear yard. Landscaping would be provided in the front yard of each lot, with an assortment of drought-tolerant plants, various-sized trees, and small patches of lawn on each parcel. Street trees would be provided in bulb-outs located along within the new cul-de-sac, with additional low-water plants provided along both sides of the street. Homeowners would be able to landscape their individual rear yards as they please, except on Lot 6 where an existing grove of Coast Live Oak trees will be preserved and incorporated into the backyard planting plan prepared by the applicant's Landscape Architect and executed by the developer in advance of the sale of the lot.

*Tree Preservation:* An arborist report prepared for the project site by HortScience, Inc. in April 2007 evaluated a total of 43 trees. Eleven of the trees are located off-site on an adjacent property and were determined to be in good to moderate condition. All eleven of these trees will be preserved. Eight of the on-site trees surveyed are remnant orchard trees in poor condition, and are not regulated by the City's Tree Preservation Ordinance. Two of the Native Coast Live Oak trees on the site are in good condition while six are in moderate condition. The proposal allows for the successful preservation of all eight of these trees; however, the trees are all of similar size and tightly grouped, and are competing with one another for adequate light and space. Accordingly, the applicant will only be required to preserve two of these trees as part of the project. The two trees are located on Lot 6 and will be required to be incorporated into a landscape plan for that lot which will be subject to approval by the City Landscape Architect prior to issuance of a building permit for the lot. Prior to the development of both Lots 5 and 6, an arborist will be required to be retained to further evaluate and guide pruning and/or removal of the trees rated as moderate in order to create a healthy environment for the trees in good condition.

The condition of the remaining trees on the site was predominantly poor (66%) and moderate (25%), with only one other tree rated as good. The applicant is proposing to remove 12 private, protected trees. Of these twelve, eight have poor and three have moderate suitability for preservation. The remaining tree has good suitability for preservation. The removal of these 12 trees will not adversely affect the appearance of the property and is necessary to allow construction of the subdivision. The applicant will be required to comply with the Tree Preservation Ordinance's mitigation requirement for the loss of the 12 trees by planting a combination of twelve 24-inch and 36-inch box trees in addition to the 16 required 24-inch box street trees being planted along the new cul-de-sac and private street.

*Site Circulation:* Vehicular access to the project would be provided via a private street located off a new public cul-de-sac running alongside the existing church and connecting to Driscoll Road. The private street features sidewalks along both sides of the street where the homes would be located, while the public cul-de-sac will be constructed with a single sidewalk along the side of the street adjacent to the church to provide direct pedestrian access from the subdivision to Driscoll Road. The garages of each unit will open directly onto the private street, with each home having its own curb cut and driveway. Pedestrian access to the entrances of each unit will be provided via walkways leading from the sidewalk to the front porch.

*Street Right-of-way Dedication and Improvements:* The developer is required to dedicate right-of-way and install street improvements in accordance with the Subdivision Ordinance and the City's Street Right-of-way and Improvement Ordinance. However, in lieu of dedicating a fully conforming public street the applicant is proposing a modified public cul-de-sac leading to a new private street with various deviations from the City's public residential cul-de-sac and private street standards. The following section outlines the street right-of-way dedication and improvement requirements for the project:

- **Public Cul-de-Sac:** Off-site vehicle and pedestrian connections to Driscoll Road are provided by a new modified public residential cul-de-sac running alongside the existing church. The applicant will construct  $\frac{3}{4}$  of the street (sidewalk and street tree planters on one side, as well as two vehicular travel lanes and one parking lane), leaving the remaining  $\frac{1}{4}$  (the opposite sidewalk, planter, and parking lane) to be constructed by the future developer of the adjacent parcel at 151 Driscoll Road. The modified street section will include a monolithic sidewalk with street tree planters provided in bulb-outs as opposed to sidewalks separated from the street by planter strips. In addition, the cul-de-sac will feature an off-set "knuckle" bulb at its terminus, rather than a standard circular bulb.
- **Private Street:** On-site vehicle and pedestrian connections to the nine lots will be provided via a private street leading out to the new public cul-de-sac. The Development Policy for Private Streets, adopted by City Council in 1984, requires that a private street serving 6 or more units have a minimum right-of-way width of 40 feet with two 12-foot wide travel lanes and two 8-foot wide sidewalk/planter combinations. As part of the Precise Planned District rezoning, the applicant is requesting permission to construct 5-foot monolithic sidewalks within sidewalk easements on each of the nine lots, with no planting strips.

*Analysis:* A standard public street dedication in this case would require 54 feet of right-of-way in order to comply with the City's standard street section for a residential cul-de-sac. The proposed project cannot comply with this standard in the location of the proposed private street without a

reduction in the number of lots because of the additional land needed to accommodate the right-of-way width. Furthermore, the project cannot comply with the standard public cul-de-sac street section alongside the existing church because there is insufficient room between the church and the adjacent property at 151 Driscoll to accommodate the full cul-de-sac.

By proposing a modified public cul-de-sac street section and a private street, the applicant is able to vary from the standards of a public street. Staff supports the proposed modified public/private street configuration because the pavement widths are generally consistent with the City-standard dimensions for minor residential street and residential cul-de-sac geometrics, and both streets will be wide enough to accommodate on-street parking for guests while still providing sidewalks on both sides (assuming the property at 151 Driscoll is eventually subdivided and developed). Ultimately, the City Council must make findings in support of both the private street and a variance for a modified public cul-de-sac based on certain findings. Staff's recommendation on these two entitlements is provided in the "Findings for Approval" section, below.

*Grading & Drainage:* The existing topography of the site slopes downward from Driscoll Road towards the back of the property. Elevations range from approximately 95 feet to 78 feet above mean sea level across the site. The grading for the site will primarily accommodate house pads for positive drainage, as well as for the street sections for the public cul-de-sac and private street. Two shallow bio-retention basins are proposed for stormwater treatment for roof runoff and runoff from the private street, while tree well filters located within the public cul-de-sac will treat half of the cul-de-sac runoff. Short retaining walls ranging from 1-3 feet in height are proposed to be installed around the two bio-retention basins. The engineer estimates 5,300 cubic yards of cut and 1,200 cubic yards of fill for a total grading of 6,500 cubic yards.

An existing connection to a public storm drain facility is located at the back of the project site. The onsite storm drainage facilities will connect to the existing public storm drain inlet. Details and design of the private storm drain system will be incorporated with the improvement plans. The drainage system shall be subject to approval of the City Engineer and the Alameda County Flood Control and Water Conservation District.

*Urban Runoff Clean Water Program:* The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to incorporate measures to prevent pollutants from being conveyed in stormwater runoff into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project design.

The applicant intends to meet the stormwater treatment requirements by installing two bio-retention basins and street tree well filters within the development. Additionally, the project will be designed to comply with Hydromodification Management standards through the provision of underground storage facilities located within the private street. In order to conform to the quantitative performance criteria of the Countywide NPDES permit, the applicant may be required to incorporate additional treatment control best management practices into the project to treat stormwater runoff. The stormwater treatment design shall be integrated into the storm drain design for the project and shall be subject to review and approval of the City Engineer prior to Final Map approval.



As required by the Alameda Countywide NPDES Municipal Stormwater Permit, the property owners shall enter into a maintenance agreement for the long-term operation and maintenance of the stormwater treatment measures located on private property. The agreement will require the ongoing maintenance of the designated treatment facilities. The property owners shall also integrate a sidewalk and pavement sweeping program to help prevent debris and other pollutants from entering the storm drains. Maintenance of all facilities in the new public cul-de-sac will be the responsibility of the City.

*Geologic Hazards:* The project site contains expansive soils and is located within an area of potential earthquake-induced liquefaction on the official Seismic Hazard Zone maps released by the California State Geologist. In accordance with the State law, the project geotechnical engineer prepared a soils report which was peer-reviewed by the City of Fremont's consultant, approved by the City, and filed with the State Geologist. The project improvements and building construction will conform to the recommendations of the seismic hazard report and peer review to ensure the safety of the structures and their occupants.

#### **FINDINGS FOR APPROVAL:**

*Planned District:* Pursuant to Section 8-21813 of the Municipal Code, the Planning Commission may recommend that the City Council adopt an ordinance establishing a new PD (or P district) if the following findings can be made:

- (a) The proposed P district, or a given unit thereof, can be substantially completed within four years of the establishment of the P district;
- (b) Each individual unit of development, as well as the total development, can exist as an independent unit capable of creating an environment of sustained desirability and stability or that adequate assurance will be provided that such objective will be attained; the uses proposed will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved under other zoning districts;
- (c) The streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic, and increased densities will not generate traffic in such amounts as to overload the street network outside the P district;
- (d) Any exceptions from standard ordinance requirements are warranted by the design and amenities incorporated into the precise site plan, in accord with adopted policy of the planning commission and city council;
- (e) The area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development;
- (f) The P district is in conformance with the General Plan of the City of Fremont; and
- (g) Existing or proposed utility services are adequate for the population densities proposed.

*Discussion:*

- (a) It has been the City's experience that the design and type of the subdivision and housing product being proposed can readily be completed within four years, and this particular applicant has successfully developed many similar subdivisions in Fremont within this timeframe. There is nothing unusual about the site and no known significant environmental constraints which could cause significant delays during construction of the project.
- (b) The entire project consists of 9 detached single-family homes all sharing a single private street for vehicular access, as well as the construction of a new public cul-de-sac off Driscoll Road. As such, the subdivision will function as an individual, fully independent unit. Each unit will be part of an HOA which will be responsible for maintaining the private street, architecture, landscaping, stormwater treatment devices, and other on-site improvements in a fully functional and aesthetically pleasing manner. In addition, the project has been designed to minimize impacts on adjacent development through the provision of landscaped setbacks and to provide an attractive street presence by orienting the front entrances of the units toward the private street. The project will also provide access to the existing church and public street frontage to a neighboring underutilized residential parcel to the east via the new cul-de-sac which will enable future development of that property consistent with the proposed project and the General Plan.
- (c) The project is estimated to generate 9 additional vehicle trips during the PM peak traffic hour and 86 total daily trips. Driscoll Road currently has a PM peak hour volume of 1,047 trips and an average daily volume of just over 12,400 vehicle trips. As such, the project would increase both the PM peak volume and the average daily volume by less than 1% (a 0.87% increase in the PM peak volume and a 0.69% increase in the average daily volume). Therefore, the project will not significantly impact the street network in the neighborhood.
- (d) The exceptions being requested in this case are warranted by the design and amenities of the subdivision in that the slight reductions in front and rear yard setbacks enable the street to be wide enough to accommodate on-street parking and sidewalks on both sides while still providing for ample usable private outdoor space in the front and rear yards. The requested exceptions for the accessory structure height limit and rear yard setback are warranted in that allowing Lot 3 to have a secondary dwelling unit over the garage will provide either a rental opportunity or housing for a family member, while not adversely impacting the adjacent property to the rear for the reasons discussed in the "Zoning Regulations" analysis, above. The requested exception for the setback of the existing church building from the new cul-de-sac is warranted in that the proposed street location is the only location where access can be provided to the site without requiring the removal of any of existing improvements or the abandonment and/or relocation of any existing easements on the subject parcel which affect a number of adjacent properties.
- (e) The adjacent lands to the north and east are all currently developed with low-density single-family dwellings, and contain buildings of similar height and mass on similarly-sized lots which abut the subject property to the north and east. As such, the proposed development would not affect their ability to be redeveloped in a manner compatible with the project.

The applicant will construct a new public cul-de-sac to connect the proposed private street to Driscoll Road which will enable the adjacent parcel at 151 Driscoll Road, a 1.5-acre parcel containing an old farmhouse and barn which is currently zoned R-1-10, to access from the cul-de-sac should that parcel ever be subdivided and developed with additional dwelling units. The developer of such a project would need to complete the street improvements along the eastern edge of the cul-de-sac to match those being constructed as part of this project, including the installation of a sidewalk and bulb-out planters with street trees. As such, the project would facilitate future development of the adjacent parcel by providing the necessary access to it via the new cul-de-sac rather than forcing future development access from an arterial street. As discussed in the "General Plan Conformance" section above, the Transportation Element discourages direct access from new development to arterial roads such as Driscoll.

- (f) The P District will conform to the General Plan in that the proposed density of 4.15 units to the acre is consistent with the land use designation of Low Density Residential, 3-5 Units per Acre, and components of the project comply with various goals and policies of the Land Use, Housing, and Health and Safety Chapters of the General Plan as discussed in the "General Plan Conformance" section, above.
- (g) There are existing water, sewer, and public storm drain systems serving the area which are capable of accommodating the proposed development, and no additional off-site easements need be secured or extensions constructed in order to tie the project into these systems. An existing on-site sanitary sewer easement will be relocated as part of this project.

*Vesting Tentative Tract Map:* In order to approve the proposed Vesting Tentative Tract Map, the subdivision must be found to be consistent with the General Plan, FMC Section 8-1418, and the Subdivision Map Act. Based on the analysis provided above, staff finds that the proposed vesting tentative map is in conformance with the General Plan, FMC Section 8-1418, and the Subdivision Map Act. However, if any of the following findings can be made, the vesting tentative tract map shall be denied. Staff was unable to make any of the findings to deny the map, and therefore recommends approval of the application.

- (1) The map fails to meet or perform one or more of the requirements or conditions imposed by the Subdivision Map Act and Chapter 1 of the Zoning Code (Subdivisions);
- (2) The proposed subdivision, together with the provisions for its design and improvements, is not consistent with applicable general and specific plans;
- (3) The site is not physically suitable for the type or proposed density of development;
- (4) The design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;
- (5) The design of the subdivision or the type or improvements is likely to cause serious public health problems; and

- (6) The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

*Preliminary Grading Plan:* Pursuant to FMC Section 8-4109, the following findings must be made in order to approve a preliminary grading plan application:

- (a) The proposed project will not have an appearance, due to the grading, excavation or fill, substantially and negatively different from the existing natural appearance;
- (b) The proposed project will not result in geologic or topographic instability on or near the site;
- (c) The proposed project will not endanger public sewers, storm drains, watercourses, streets, street improvements or other property; will not interfere with existing drainage courses; and will not result in debris being deposited in any public right-of-way;
- (d) Conformity, where applicable, to special concerns relating to the adopted seismic safety element and concerns shown on maps issued by the U.S. Geological Survey and the California Division of Mines and Geology; supplemental data and substantiation of conclusions may be required by the City Engineer upon city review of the reports; and
- (e) The proposed project will not unacceptably affect the health, safety or welfare of adjacent residents or landowners, nor the citizens of Fremont.

*Discussion:*

- (a) In this particular case, the preliminary grading plan is designed to create relatively level land between the back of the church property and the adjacent single-family homes directly north of the site which sit topographically between  $\pm 2$  and  $\pm 6$  feet below the land to be subdivided, as well as to channel runoff into the existing and proposed storm drain systems serving the subdivision. There is an existing  $\pm 2$ -foot high retaining wall running along the back of the single-family properties which would be preserved, with all proposed cutting and filling occurring between it and the new rear property line of the church parcel. As such, the proposed grading would not significantly alter the appearance from the adjacent properties or within the property itself.
- (b) All graded areas would be engineered with fill material that will be compacted in accordance with the specifications of the Grading, Erosion and Sedimentation Chapter of the Fremont Municipal Code to provide a safe, stable environment for the proposed end use of the land for single-family residential development. As such, implementation of the project will not cause geologic instability which could result in a safety hazard.
- (c) All utility services would require extensions from off-site mains into the subdivision; there are currently no streets or sewer, water, or storm drain lines within the area of land to be developed. Similarly, no bodies of water traverse the site. As such, there are no existing utilities or water bodies that could be damaged as a result of the project.

A new intersection between the proposed cul-de-sac and Driscoll Road would be constructed as part of the project, but any damage to the existing public right-of-way improvements along Driscoll would be repaired and/or replaced to the satisfaction of the City Engineer. In addition, the project would be designed so as not augment runoff onto any adjacent properties, and the applicant would be required to implement erosion control measures during grading and construction to prevent sediments and/or debris from entering the public storm drain systems.

- (d) According to the 2004 California State Geologic and Seismic Hazard Zones map, the project site is located in an area susceptible to earthquake-induced liquefaction. Furthermore, according to a geotechnical report prepared for the project in August 2010, the property contains expansive soils. As such, all grading, foundations and structures must be engineered and designed in conformance with applicable geotechnical and soil stability standards of the California Building Code.
- (e) Minor construction-related impacts to the existing residential neighborhood immediately north and east of the project site will occur, such as noise, vibration, and exhaust fumes from earth-moving equipment. However, these impacts would be of a short duration, and the final topography that would be established upon completion of the grading work will be geologically stable and suitable for residential development. The project would also be designed to capture all runoff from the site and channel it to the storm drain system thereby, and to prevent erosion and sediments from entering the street and storm drain system.

*Public/Private Street Design Concept:*

The project has been redesigned from its original proposal which featured a full-length private street to a dual public cul-de-sac/private street design. The first half of the new street will be a modified public cul-de-sac running alongside the existing church with an offset bulb at its terminus, while the second half will be a private street tapping into the cul-de-sac bulb off of which the nine lots will be located. The following two sections discuss the entitlements and findings required for the proposed private street and modified (non-standard) public cul-de-sac.

*Private Street:* In accordance with FMC Section 8-1502, all lots created by a subdivision must have access to a public street. The same code section allows for private streets to be used to provide access in certain cases where it is determined that such a street would be more appropriate than a public street. In such cases, the decision-making body must make the following finding in order to approve a private street over a public street:

- (1) The most logical development of the land being subdivided requires private street access.

*Discussion:*

In this case, allowing the private street adjacent to the nine lots is the most logical approach in that the land being subdivided is currently encumbered with various easements affecting the adjacent properties, as well as existing conditions that make it impossible to construct a public street to the City standard for a residential cul-de-sac (particularly, existing drainage patterns in the area which result in surface flow from the adjacent uphill property at 151 Driscoll across the project site, as well as the existing church and its surface parking lot, and joint access, parking, and emergency vehicle easements benefiting the adjacent Bridges Community Church to the west). Because of these existing conditions, the public cul-

de-sac can only be constructed to a certain width between the church and the adjacent property, so it stands to reason that the remaining portion of the street should be the same width as the cul-de-sac. A private street is more appropriate for the remaining portion in that special underground stormwater storage facilities are needed to accommodate the runoff from the uphill property within the private street which would not be allowed in a public street because they do not benefit the general public. Allowing the private street adjacent to the lots will also enable the applicant to accommodate the subdivision's stormwater storage needs within the street consistent with regional stormwater runoff requirements. The private street will function much like a public cul-de-sac with two travel lanes, sidewalks, and on-street parking, but the burden of maintenance of all the in-ground facilities within the street will fall on the HOA and the church rather than the City. As such, staff supports the proposed private street as shown in Exhibit "D".

*Public Street Modifications for Cul-de-Sac:* In accordance with FMC Section 8-3115, any proposed modifications to the City's standard details and specifications for a new public street (or cul-de-sac) may only be approved subject to the granting of a variance by the City Council. In order to grant a variance to allow such modifications, the Council must make the following finding:

- (1) Due to special circumstances applicable to the lot and lot use, including size, shape, location or surroundings of the lot and the regularity and intensity of vehicular and/or pedestrian ingress and egress to and from the use thereof, the strict application of the Street Right-of-Way and Improvement Ordinance would cause undue hardship, unnecessary to carry out the purpose and spirit of the Ordinance.

*Discussion:*

In this case, the applicant is requesting permission to modify the City standards for a public residential cul-de-sac by providing an offset bulb, monolithic sidewalks, and street tree planters in bulb-outs because there is insufficient room where the proposed street is located to accommodate a full-width public cul-de-sac. The remainder of the subject parcel is encumbered with various easements and improvements which preclude the ability to accommodate a street elsewhere on the property, including the church itself, as well as a joint access easement and a parking lot which the Seventh Day Adventists currently share with the adjacent Bridges Community Church through a legally binding shared parking agreement. For these reasons, the only available location for the project to take access to Driscoll Road is between the church and the property next-door to the east at 151 Driscoll. Requiring the applicant to remove a portion of the existing church or redesign its onsite parking facilities and amend its parking agreement with the Bridges Community Church to make room for a full-width public cul-de-sac elsewhere across the subject property would place an undue hardship on the applicant. Allowing the modified cul-de-sac street section in this case would still fulfill the spirit of the Ordinance in that sidewalks for pedestrians will still be provided, along with street trees and on-street parking along the length of the cul-de-sac (excluding the bulb itself). Because of the small number of homes that will take access from the cul-de-sac and the relatively low daily traffic volumes they will generate, staff supports the public street modifications as proposed on the grounds that vehicular and pedestrian safety will not be compromised by the modifications.

*Affordable Housing Plan:* Pursuant to FMC Section 8-22174(d), the following finding must be made in order to approve an affordable housing plan:

- (a) The proposed affordable housing plan conforms to Article 21.7 of the Zoning Ordinance (Affordable Housing Ordinance).

Discussion:

The alternative plan to purchase market-rate units for conversion to BMR units as proposed complies with the City's Affordable Housing Ordinance in that: (a) the units will be vacant and foreclosed upon; (b) the units will be located within one mile of either the Fremont BART station or the Centerville Amtrak/ACE Train station; and (c) the units will be rehabilitated at the applicant's expense in compliance with current building and life safety codes subject to building permit approval and final inspection by the City's Building Division.

*Planning Commission Action:* On March 10, 2011, the Planning Commission considered the proposal and unanimously recommended Council approval in accordance with staff's recommendation with one additional condition of approval requiring an exterminator to treat the property for field mice prior to the commencement of any ground-breaking activities (Condition #92). At the hearing, the applicant objected to a staff-recommended condition which required the provision of a private access easement for the benefit of the adjacent property at 151 Driscoll Road over the portion of the private street where the public cul-de-sac is now located on the grounds that he should not have to provide access to that property without receiving any up-front financial reimbursement from its current owner (the previous proposal had the entire length of the new street being private, with no public cul-de-sac). However, the Planning Commission voted to uphold staff's recommendation and include the condition in its final recommendation to the City Council. Since that time, the applicant has redesigned the project to feature the public cul-de-sac adjacent to 151 Driscoll and a private street at the end of the cul-de-sac, thereby effectively eliminating the need for any granting of a private access easement to the adjacent property.

A total of five neighbors residing along Jacaranda Drive and Ferreira Place behind the project objected to the proposed home sizes, believing them to be too large and inconsistent with the character of the other homes in the neighborhood. In the end the Planning Commission made no recommendations to reduce the size of the units. Some of these neighbors also expressed concern over the impacts the project could have on the local school district and on drainage patterns in relation to their properties.

*Impact Fees:* This project will be subject to citywide Development Impact Fees, including fees for fire protection, park facilities, park land, capital facilities and traffic facilities. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance. The applicant may elect to defer payment of the fees in accordance with the City's Impact Fee Deferral Program.

**FISCAL IMPACT:** Not applicable.

**ENVIRONMENTAL REVIEW:** An Initial Study and Draft Mitigated Negative Declaration (see Informational Item #1 and Exhibit "A") were prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The environmental analysis identified concerns regarding potential significant impacts to air quality through the generation of

construction-related dust and other airborne particles. The Draft Mitigated Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels, including the implementation of standard dust control methods during all grading and construction activities. The mitigation measures are included as conditions of approval for the project.

**ENCLOSURES:**

- [Draft Ordinance](#)
- [Exhibit “A” – Draft Mitigated Negative Declaration and Mitigation Monitoring Program](#)
- [Exhibit “B” – Rezoning Map](#)
- [Exhibit “C” – Precise Planned District P-2010-280](#)
- [Exhibit “D” – Vesting Tentative Tract Map 8052, Private Street, Modified Public Cul-de-Sac, Preliminary Grading Plan](#)
- [Exhibit “E” – Affordable Housing Plan](#)
- [Exhibit “F” – Recommended Findings and Conditions of Approval](#)
- [Informational #1 – Initial Study](#)
- [Informational #2 – Project Summary Data](#)

**RECOMMENDATION:**

1. Introduce an ordinance rezoning the property to Planned District (P-2010-280);
2. Find that the Precise Plan for the project, and Vesting Tentative Tract Map No. 8052 and the accompanying Private Street, Modified Public Cul-de-Sac, and Preliminary Grading Plan as depicted in Exhibits “C” and “D”, respectively, fulfill the applicable requirements set forth in the Fremont Municipal Code;
3. Approve the Precise Plan as shown on Exhibit “C” (site plan, floor plans, building elevations and landscape plans), and Vesting Tentative Tract Map No. 8052 and the accompanying Private Street, Modified Public Cul-de-Sac, and Preliminary Grading Plan as shown in Exhibit “D”, based upon the findings contained in this report and subject to the conditions of approval set forth in Exhibit “F”;
4. Approve the proposed Affordable Housing Plan as shown in Exhibit “E” authorizing the applicant to purchase two off-site market-rate 3-bedroom condominium units for conversion to Below-Market-Rate units, or pay the required in-lieu fees to achieve compliance with the Affordable Housing Ordinance;
5. Approve the proposed removal and mitigation for all private, protected trees pursuant to the City’s Tree Preservation Ordinance and as described in the staff report and conditions of approval set forth in Exhibit “F”; and
6. Direct staff to prepare and the clerk to publish a summary of the ordinance.



**\*2.12 PACIFIC COMMONS GATEWAYS AND SIGNAGE STANDARDS AMENDMENT  
(PLN2010-00221)**

**Public Hearing (Published Notice) to Consider the Planning Commission Recommendation to Adopt an Ordinance Amending the Development Standards and Guidelines Pertaining to Gateways and Signage Standards for Pacific Commons (Planned District P-2000-214)**

**Contact Person:**

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**Executive Summary:** The Applicant, Catellus Development Corporation, wishes to install within the Pacific Commons development another freeway oriented sign next to the existing sign to identify two major anchors and other key tenants of the development's new retail/entertainment district in Planning Area 5, known as "The Block". To facilitate this project, the applicant requests the City Council amend the Pacific Commons Gateways and Signage Standards to increase the number of freeway oriented signs allowed for the development from one to two, which will in turn allow staff to process an amendment to the Development's Planned Signage Program incorporating the proposed sign.

The Gateways and Signage Standards for the Pacific Commons Planned District (P-2000-214) are contained in the Planned District's Development Standards and Guidelines. The applicant's requested change to the standards requires a Planned District Major Amendment. Staff and the Planning Commission support the request and recommend that the City Council approve the Major Amendment, subject to conditions.

**BACKGROUND:** In 1987, the original development plan for the 877-acre master planned area now known as Pacific Commons was originally contemplated. The land was not developed, and in 1996 a major amendment was prepared and approved for the Pacific Commons Planned District Master Plan to allow for the development of 8.3 million square feet of development for research and development uses on an approximately 662-acre portion of the land, with a set-aside of 160 acres of wetland preserve within the overall 877 acre area.

In 2000, subsequent to the 1996 approvals and under the 2000 Major Amendment in fulfillment of the adopted wetland environmental mitigation measures, Federal authorities required wetland preservation and mitigation of 390 acres rather than 160 acres. Because of this major change to the developable area, a Major Amendment to the Planned District was proposed and approved to modify and refine the Pacific Commons development project to include the Federal wetland preservation requirement and mitigation, which were adopted under an additional Supplemental Draft and Final Environmental Impact Report (SEIR). The approval of that Major Amendment resulted in a significant reduction in the portion of the Pacific Commons development area from 662 acres to 373 acres, and the compaction of allowable retail (Pacific Commons Planning Areas 1 and 2) and industrial office uses totaling 8.3 million square feet concentrated on the north side of the Master Plan Area and a set-aside of the wetland preserve to the south.

In 2003, another Major Amendment to the Planned District was approved with an addendum to the 2000 Supplemental EIR for the use of Pacific Commons Planning Areas 3 and 4 as retail rather than office, with a reduction of the total development entitlement to 6.8 million square feet. As a result of the 2003 amendment, 863,000 square feet of retail development and supporting infrastructure for Pacific Commons has been constructed since 2003. This approval included a document entitled *Supplement B – Pacific Commons Planned District Development Standards and Guidelines* which serves as the guiding instrument for the development of the Pacific Commons retail area. The document also contained standards and guidelines for signage which must be amended to permit a second freeway pylon sign.

In 2010, the City Council approved a subsequent Major Amendment (PLN2010-00221) to permit additional retail for the 27-acre Pacific Commons Planning Area 5 (“The Block”) just south of Curie Street, between Boscell Road and Christy Street. At that time, the applicant was in the process of planning a design for a second freeway pylon sign after modification to the existing freeway pylon sign to add signage was explored and determined to be infeasible. The applicant is now seeking a second freeway sign to identify two anchors and other key tenants of The Block.

The Planning Commission recommended the proposed Major Amendment on May 12, 2011.

**PROPOSED PROJECT:** The proposed project is a Major Amendment to Planned District P-2000-214. The Major Amendment would allow a second freeway pylon sign for the Pacific Commons major retail district area to be located adjacent to the existing Pacific Commons’ freeway pylon sign within Planning Area 1.

The Major Amendment would specifically modify text in the *2010 Revised Supplement B- Pacific Commons Planned District Development Standards and Guidelines* to permit the second freeway pylon sign. The proposed text changes to facilitate the proposal are found under “Zoning/Planned District Conformance” section of this report below.

## **DISCUSSION/ANALYSIS:**

### ***General Plan Conformance***

The existing General Plan land use designation for the project site is Restricted Industrial (Commercial-Industrial Overlay). The proposed project is consistent with the existing General Plan land use designation for the project site because the sign is an accessory use intended to help implement Land Use Goal LE 2, “A strong municipal tax base.”

### ***Zoning/Planned District Conformance***

*Pacific Commons Planned District:* The *2010 Revised Supplement B, Pacific Commons Planned District Development Standards and Guidelines* emphasizes that a comprehensive and clear signage system is a critical component to the success of the retail development area of Pacific Commons. Pursuant to Section 8-21814, a Major Amendment is required because standards and guidelines were adopted as part of the Pacific Commons Planned District zoning approvals. In this case, staff recommends a Major Amendment to the Planned District standards and guidelines to allow a second freeway pylon sign, as follows:

**Proposed Major Amendment (Text Modifications) to 2010 Revised Supplement B, Chapter II [Master Planning Intent], Subsection E [Gateways and Signage]:**

***Signage***

- *A Two freeway pylons sign shall be located in Planning Area 1. The pylon signs shall identify key tenants of the Major Retail District. ~~and be~~ The signs shall be located to provide maximum visibility from Interstate 880. The proportions of ~~this~~ these pylon signs shall be sufficient to reasonably compete with signs of similar purpose along the Interstate 880 corridor but shall be limited to a 156'<sup>1</sup> maximum height. The signs shall be designed to complement the overall design character of the Pacific Commons signage program as illustrated in the Master PD Guidelines but will be ~~a~~ distinctly different elements than the primary gateway feature as shown in those sections. A reader board in whole or part of ~~this~~ these signage elements shall not be allowed.*

*Planned Sign Program:* Should the City Council approve the applicant's request, pursuant to Section 8-22103 an amendment to the Pacific Commons Planned Sign Program would be administratively processed at a staff-level to include the second freeway pylon sign for the Major Retail District, along with other new building signs for Planning Area 5. The Planned Sign Program was established to implement the comprehensive sign plan called out in the Planned District. Deviations to general sign standards are recognized to enable maximum incentive and latitude to achieve sign variety and good design for the Pacific Commons Major Retail District.

**FINDINGS FOR APPROVAL:** In order to approve the proposed Planned District Major Amendment, the project must be found consistent with the General Plan and Zoning Ordinance. Based on the above analysis, staff finds the proposed Planned District Major Amendment is in conformance with General Plan and Zoning Ordinance and recommends the following findings:

***Planned District Major Amendment Findings Pursuant to Section 8-21813:***

- A. The proposed "P" district, or a given unit thereof, can be substantially completed within four years of the establishment of the "P" district.
- B. That each individual unit of development, as well as the total development, can exist as an independent unit capable of creating an environment of sustained desirability and stability or that adequate assurance will be provided that such objective will be attained; that the uses proposed will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved under another zoning district.
- C. That the streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic, and project intensity will not generate traffic in such amounts as to overload the street network outside the "P" district.

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<sup>1</sup> The height of the pylon sign was permitted to increase from 90 feet to 156 feet in a 2004 Planned District Amendment.

- D. That any exception from standard ordinance requirements is warranted by the design and amenities incorporated in the precise site plan, in accord with adopted policy of the Planning Commission and City Council.
- E. That the area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development.
- F. That the "P" district is in conformance with the General Plan land use designation.
- G. That existing or proposed utility services are adequate for the project intensity proposed.

**FISCAL IMPACT:** None.

**ENVIRONMENTAL REVIEW:** An Environmental Impact Report (SCH#19996052016), including the 2000 and 2010 Supplement to the Environmental Impact Report, has been previously prepared for this project. There are no substantial changes with respect to the project and/or its circumstances which require major revisions of the SEIR due to new significant environmental effects, a substantial increase in the severity of previously identified significant effects, or new information of substantial importance.

The comprehensive mitigation measures in the SEIR will continue to be implemented for the project and monitored as provided in the Mitigation Monitoring and Reporting Plan, as well as the permits received from Federal and State resource agencies.

**ENCLOSURES:**

- [Draft Ordinance](#)
- [Exhibit "T" - Amendment to 2010 Revised Supplement B Addendum, Pacific Commons Planned District Standards and Guidelines](#)
- [Exhibit "J" - Findings and Conditions of Approval](#)
- [Informational Item - The Block @ Pacific Commons Freeway Pylon Sign](#)

***Supplemental Hearing Materials (Not Enclosed):***

- 2010 Supplement B Addendum-Pacific Commons Planned District Development Standards and Guidelines.

**RECOMMENDATION:**

1. Hold public hearing.
2. Find that the Environmental Impact Report (SCH#19996052016), including the 2000 and 2010 Supplement to the Environmental Impact Report, previously prepared for this project is sufficient, and that there are no substantial changes with respect to the project and/or its circumstances which require major revisions of the SEIR due to new significant environmental effects, a substantial increase in the severity of previously identified significant effects, or new information of substantial importance.
3. Find that the proposed project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Local Economy Chapter as enumerated within the staff report.

4. Waive full reading and introduce an Ordinance adopting the Planned District Major Amendment as shown in Exhibit "I" (2010 Revised Supplement B, Pacific Commons Planned District Development Standards and Guidelines), based on findings and subject to conditions in Exhibit "J."
5. Direct staff to prepare and the Clerk to publish a summary of the ordinance.

## 5.1 PUBLIC HEARING ON THE FY 2011/12 OPERATING BUDGET

### First Public Hearing and Council Direction to Staff on the Proposed Fiscal Year 2011/12 Operating Budget

#### Contact Person:

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**Executive Summary:** The purpose of this report is to recommend that the City Council hold a public hearing on the FY 2011/12 operating budget. The second public hearing and adoption are scheduled for June 14, 2011.

**BACKGROUND:** The City Council held a regular meeting on May 24, 2011, to consider the City Manager's proposed budget for fiscal year 2011/12. Following tonight's first public hearing, a second public hearing is scheduled for June 14, 2011. Council may adopt the budget, following the public hearings, on June 14, 2011.

**DISCUSSION/ANALYSIS:** The following information is from the Budget Overview section of the proposed budget document. It sets the context for the proposed budget by describing the opportunities and challenges the City will address and the major initiatives underway. It also summarizes the budget strategies proposed for FY 2011/12.

The fiscal year 2011/12 budget process presents a uniquely challenging environment and opportunity for the organization and community. A slow and anemic economic recovery from the Great Recession, coupled with increasing personnel costs, has resulted in a persistent General Fund deficit. The bridging strategies used to balance the budget the last several years, such as strategic reductions in service levels and the cautious use of reserves, have positioned Fremont better than most cities in the Bay Area. However, given the length of the economic recovery and rising employee costs, these actions have not been enough to address the structural imbalance in the General Fund. The City's need for long-term structural budget change requires a fresh look at the City's cost structures, methods of service delivery, portfolio of services offered and ability to generate revenue. This requires thoughtful deliberation and difficult decisions about the future of City services and the manner by which those services are provided. In spite of these significant challenges, staff has prepared a balanced budget for the City Council's consideration.

**Economic Update:** The nation seems to finally be emerging from the longest, deepest recession since the Great Depression of the 1930s, although unemployment continues to be an issue. The national economy picked up considerably in the fourth quarter of 2010. The broadest measure of productivity in the United States, gross domestic product, increased at 6.5%, after lagging at about 1% for the first three quarters. Prior to that, gross domestic product had contracted for four consecutive quarters between the third quarter of 2008 and the second quarter of 2009, something that had not occurred since the late 1970s. The most recent strong showing is attributed to a shrinking trade deficit, a sudden resurgence in

consumer demand, and a bounce in real estate sales. As it often does, California led the way into this economic abyss, and recovery here may be slower than in other parts of the country. Unemployment continues to be at an all-time high – and significantly higher than the national unemployment rate. The local situation was exacerbated by the closure of the NUMMI automobile plant on April 1, 2010, which resulted in the loss of 4,700 jobs locally, and 15,000 jobs in the region.

California now appears to be headed down the road toward economic recovery, but the trip will be long and difficult. Although there has been a slight increase in jobs, some sectors are still struggling. Not surprisingly, sectors tied to the housing market have been the hardest hit. The real estate, rental and leasing industries all hit new lows in January, and construction has yet to emerge from the doldrums. The retail sector, which has seen some decent growth on the spending side, has so far not been able to translate those gains into a significant number of new jobs. In its most recent economic outlook in April, Beacon Economics is forecasting a steady but prolonged recovery for California's economy.

The State continues to face a budget shortfall that is far too large due to fundamental problems with the State's budget system. Declines in construction and consumer spending continue to thwart the State's attempts to balance its own budget. Although the State is currently seeing increases in revenues, many of these increases are based on temporary solutions to fill gaps over the short term, and most will expire on June 30, 2011 unless an extension is passed. The State Department of Finance estimates that the expiration of the rate increases will result in a loss of about \$3.3 billion in personal income taxes for the State general fund over the next two years, and there will be an even bigger hole to fill in terms of lost sales tax revenue. Some progress has been made on the expenditure side, but so far there has yet to be any consensus in Sacramento on expenditure prioritization. The underlying economy is improving, but that is only half the battle in dealing with California's budget gap. There need to be serious, long-term solutions on both the revenue and the expenditure side if the State is going to dig itself out of its persistent \$20 billion hole.

**Impact of State's Financial Condition:** The instability of the State budget continues to be a real threat to local governments, including Fremont. The California State Constitution requires the Legislature to send a budget to the Governor by June 15 and subsequently requires the Governor to sign the budget by July 1. These deadlines may have more meaning this year because Proposition 25, approved in November 2010, prohibits legislators from being paid if they submit a late budget to the Governor.

The Governor's initial FY 2011/12 budget, presented in January 2011, proposed \$26.4 billion in solutions, including providing for a \$1 billion reserve. The proposal included the following:

- The elimination of redevelopment agencies and enterprise zones to save \$1.7 billion and \$924 million, respectively.
- A five-year extension of temporary tax and fee increases approved in 2009; specifically, a 1% increase in sales tax, an increase in the vehicle license fee (VLF) to 1%, and a further increase in the VLF of 0.15% for local public safety programs, as well as an increase in the personal income tax, all of which are due to expire on June 30, 2011. The Governor proposed that these tax extensions be ratified by the State's voters at a special election. However, the opportunity for a June special election was missed when negotiations at the Capitol stopped in late March.

- A broader realignment discussion addressing State services such as fire, court security, community-based corrections, mental health services, foster care and adult protective services to local government (primarily counties).

The Governor issued the May revision of his budget proposal on May 16, 2011, and it is largely unchanged from his January proposal. A number of budget solutions have already been approved, including \$11.2 billion in cuts (about half the deficit), which will become effective on July 1, 2011, regardless of whether the main budget has been adopted. The Governor also signed SB 94, a bill that extends the time frame for the State to notify and collect vehicle registration fees from California vehicle owners. The effect of this is to allow for some additional time to find a funding solution for local law enforcement grants, including COPS program funding, booking fee subventions, and numerous county programs, all of which are funded with the existing temporary increase in VLF, which is set to expire on June 30, 2011.

The Governor's proposal to eliminate redevelopment agencies focused attention on the critical role redevelopment plays as the most effective tool local communities have in creating jobs, improving infrastructure, cleaning up brownfields, building affordable housing and transit-oriented development, and removing blight from neighborhoods. This proposal has been challenged as being unconstitutional under the provisions of Proposition 13, Proposition 22, and the core tax increment protections provided under Article 16, Section 16 of the State Constitution. If the Governor is successful, the City's ability to receive property tax increment of approximately \$35 million annually for affordable housing and infrastructure with regional benefits will be effectively eliminated. The elimination of redevelopment would not only be disastrous locally, but would also have negative impacts statewide, as well. However, the City's General Fund will benefit with the receipt of \$4 to 5 million in additional property tax annually. It is not known at this time how this matter will be resolved.

State constitutional provisions and State laws approved by the voters limit the State's budget flexibility in solving structural deficits. Voters have "locked in" an increasing share of budgeted expenditures without increasing revenues. Such voter-approved funding commitments are often contradictory but, even worse, they reduce the State's flexibility needed to deal with changing budget circumstances. All of these factors, combined with the need for a two-thirds vote in each house of the Legislature to approve revenue measures, make it especially difficult for the Governor and the Legislature to reach agreement on the State's budget.

**How We Got Here:** The State of California has a long history of raiding local government coffers to help balance its budget in times of economic downturn and fiscal stress. Fremont experienced a significant budget challenge in the early 1990s when, in response to the severe recession at that time, a significant reduction in property tax revenue occurred. In order to fulfill its funding requirement to schools under Proposition 98, the State permanently took property taxes from local government twice on an ongoing basis to fund its Education Revenue Augmentation Fund (ERAF). These two actions are often referred to as ERAF I and II, and they continue to this day. For the City of Fremont, the amount of this loss has grown to \$14,345,000 annually, for a cumulative property tax loss of \$172.6 million since 1992. Although there have been some modest offsets for this loss from the State, in the form of Proposition 172 and COPS funding, the cumulative loss is still \$153.7 million after taking these offsets into account.



As the organization attempted to deal with these significant and unanticipated revenue losses, difficult budget cuts were made, and negotiations with employees resulted in their starting to pay their own employee contribution to the California Public Employees' Retirement System (CalPERS). Prior to that, Fremont (like most other cities) paid both the employer and employee contributions. Beginning in 1994, all employees began paying their employee contribution, resulting in a 7% budget savings for non-sworn (miscellaneous) employees and a 9% budget savings for sworn public safety employees.

The need for a change in the status quo was also identified. This was at the same time that *Reinventing Government* had just been published, and the time was ripe for looking at different ways to do business and deliver services to the community. Organizational "reinvention" was made all the easier by the beginning of the technology ("dot-com") boom. With its location in Silicon Valley and significant business-to-business sales tax base, economic recovery came roaring back to Fremont in the late 1990s. Sales tax revenues increased at rates few could have imagined. Staff and Council realized this revenue growth rate could not be sustained for the long-term, and efforts were made to not commit one-time revenues to ongoing costs. Instead, the Council formally adopted its reserve policies for the General Fund in 1996, and a significant portion of these increased revenues were also committed to major capital needs, one example being significant street maintenance projects. During this time, some strides were made in reducing the backlog of deferred maintenance, with the result that the City's pavement condition index (PCI) rose to 79 (on a scale of 0-100). (Unfortunately, it has since declined, currently standing at 62.)

Fremont was not the only beneficiary of the growing economy. The State's revenues were likewise increasing by leaps and bounds, and during the late 1990s, revenue growth was predicted to continue. Income tax revenues account for over half of the State's income. During the dot-com boom, these revenues increased dramatically because of income taxes derived from business income and capital gains (most notably, stock options). These two revenue sources are much more volatile than wage and salary income. The top 1% of income earners accounted for just over 30% of State income tax revenues in the early 1990s. This grew to nearly 50% in 2000, at the height of the tech boom.

The CalPERS investment portfolio also grew substantially, resulting in a number of agencies being "super funded" (meaning there were enough plan assets available so that neither employer nor employee contributions would be required for the remaining life of the plan). It was during this time that many employer rates (including Fremont's) dropped to zero or close to it (although Fremont was never in the "super funded" category).

The effect of the "hot" economy was two-fold. First, it became increasingly difficult to hire and retain good employees. The competition was coming not only from other public sector employers, but from the private sector, which lured job applicants with promises of stock options, compensation packages and perks the public sector couldn't match, and the allure of potential wealth should an initial public offering (IPO) of a start-up company's stock be successful. The City – and all public employers – was in a competition for the best and the brightest, not only with each other, but with the private sector, as well.

The second effect was pressure at the State level on the Legislature and CalPERS to enhance retirement benefits. Employee bargaining groups saw the significant amounts of money available at CalPERS, and they wanted to be able to access those supposed "surpluses" to provide their members with better

retirement benefits. The flaw in this perception of “surplus” is that it was based on actuarial assumptions used for the existing benefit level – it was really not “surplus.” Undeterred by actuarial reality, the Legislature passed legislation, which the Governor signed, to provide enhanced retirement benefit formulas, subject to negotiation at the local level.

Fremont, like most other cities, faced much pressure from employees to implement these new benefit formulas. This pressure was exacerbated by CalPERS staff telling employees and their bargaining units that these new benefit formulas were “no cost” options. Facing both employee pressure and competitive pressure, the City negotiated with its employee bargaining groups, reaching agreement to enhance the sworn public safety retirement benefit formula from 2% at 50 to 3% at 50 in 2001, and the non-sworn (miscellaneous) retirement benefit formula from 2% at 55 to 2.5% at 55 in 2002. Unlike many other entities, in Fremont, both retirement benefit enhancements provided for some level of cost-sharing by the affected employees (generally in the form of foregone compensation increases). In addition, the employee contribution rate for non-sworn employees increased permanently from 7% of compensation to 8%. The resulting new labor agreements were renewed for an unprecedented seven years. At the time of their ratification, the longer term of these agreements was considered to be an effective way to mitigate exposure to significant future salary increases because they provided for increases at rates below that in the existing market.

Then, in late 2002, the dot-com bust hit. At the time, it was often referred to as “the perfect storm.” Sales tax revenues dropped suddenly and significantly, CalPERS employer rates shot up dramatically because of investment losses, and the State once again looked to local government to help balance its budget (through one-time diversions of property tax, amounting to \$10 million for Fremont, often referred to as ERAF III and IV). Once again, in FY 2002/03, the City acted quickly to resolve its budget challenges and evaluate the type and nature of services it delivers.

One thing the City was not able to accomplish during this time was labor concessions because of the existing labor agreements. What had once been viewed as an effective budget management strategy soon became an obstacle to balancing the budget. As a result, other difficult courses of action were pursued, including the elimination of 165 regular positions and 59 temporary positions, the outsourcing of fire dispatch services to a regional fire dispatch consortium, elimination of evening meals at the Senior Center, a reduction in grants to local non-profit social services groups, the elimination of City-paid extra hours at the Alameda County Fremont Main Library and local branches, reduction of most support for community special events, including funding for the Fremont Symphony Orchestra, closure of the Development Services Center counter half a day per week, and elimination of the City’s traffic calming program. Public safety departments took budget reductions of 10% and non-public safety departments reduced their budgets by 20-30%.

It appeared the worst was over and recovery returned in the mid-2000s – that was, until the sub-prime mortgage melt-down began in 2007. In September 2008, with the collapse of Lehman Brothers, Fremont, along with the rest of the country and, in fact, the world, was plunged into the longest, deepest recession since the Great Depression. What had started out looking to economists as a bit of an economic blip – a market correction – became the bursting of the housing bubble. Fremont began ratcheting back spending in 2007, made further cuts in 2008, and in 2009 again significantly reduced the work force, as well as successfully negotiating with employee bargaining groups for wage concessions. In order to balance the FY 2009/10 budget, public safety departments reduced their budgets by 5%, and

all other departments reduced their budgets by 10-20%. In addition, 74 regular positions and 29 temporary positions were eliminated. The overall cumulative effect of these position eliminations reduced the authorized staff complement from 1032.35 full-time equivalent (FTE) positions in FY 2002/03 to the current level of 848.485 FTE positions in FY 2011/12, an 18% reduction.

City services are provided by employees, and financial instability impacts City staff. These severe reductions in FY 2002/03 and again in FY 2009/10 created critical public safety and maintenance issues and have hampered our ability to provide optimal administrative support to frontline operations. Although these actions were necessary to help balance the budget, staffing levels for the most basic services – public safety and maintenance – are at their lowest level in almost 20 years when viewed in relation to Fremont’s population. The total City workforce now consists of 3.9 FTEs per 1,000 residents, one of the lowest staffing levels in Alameda County.

**FY 2011/12 Fiscal Outlook:** Now, as the City looks ahead to FY 2011/12, staff is encouraged by indicators that the worst may be over economically. Economists are no longer talking about the possibility of a “double dip” recession – although they generally agree that the recovery will be a long, slow one. Typically, local government revenues lag both economic downturn and economic recovery over the course of the business cycle. This gap between the change in economic conditions and local agency revenue collections can last from 18 months to several years. The Joint Venture Silicon Valley (JVSV) 2011 Index of Silicon Valley indicates local government recovery from the current recession will likely experience an even greater lag than has been the case over the course of previous recessions. In addition to the high unemployment rate, it will take some time for the housing market to recover. Further, the blow to the financial markets has resulted in lost value in public retirement funds, which now have fewer resources to meet growing obligations. This results in increased employer contributions into the retirement funds to meet those obligations.

Property tax appears to be stable, and sales tax seems to be ticking up a bit, just as staff anticipated when the FY 2010/11 budget was adopted. What was not fully anticipated at that time was the significant CalPERS rate increases looming in FY 2011/12 and beyond. These increases are the result of significant investment portfolio losses at CalPERS, and a change in demographic assumptions to reflect retirees generally living longer (and, thus, collecting benefits for a longer period). Because CalPERS “smoothes” investment portfolio gains and losses over 15 years, the current high rates will likely reach a peak over the next 3-5 years or so and then level off at that high rate for the foreseeable future. (This practice of smoothing over such an extended period of time was implemented at the behest of local agencies when they were reeling from significant rate spikes in FY 2002/03. At that time, local agencies requested more predictability and less volatility in employer rates, and the CalPERS Board agreed to make that change.) Implementing a second tier retirement benefit for new employees will help mitigate the impacts of these high employer rates over the long term.

The City met previous difficult times by reducing spending throughout the organization and by focusing on attracting and retaining retail businesses to increase revenue. Staff has been vigilant and disciplined over the past several years, cutting costs and reducing staffing to a point of marginal service delivery. A dollar saved today is one we won’t have to cut in the future, and the organization has taken that to heart. Even so, some very difficult cuts and service reductions have been necessary to make sure we continue to live within our means.

Total budgeted resources in the coming fiscal year will be adequate to support total budgeted expenditures of \$134.1 million, so the budget is considered to be balanced. The FY 2011/12 budget also maintains the City Council's long-standing funding priorities by allocating over three-quarters of the budget to direct costs for public safety and maintenance. The share of General Fund resources budgeted for these purposes is actually 90% when overhead costs required to support these functions are allocated. The FY 2011/12 budget is 0.4% less than last year's adopted budget.

Property tax and sales tax are the City's most significant revenue sources. The City's FY 2011/12 property tax revenues are based on assessed property values as of January 1, 2011. Although property transfer tax from real estate transactions is beginning to grow again, the increase is primarily attributable to more transactions occurring. The average amount per property transaction is just now beginning to show a slight increase, after falling for the past two years as a result of the bursting of the housing bubble at the start of the recession. A negative factor for property tax is the preliminary impact of the NUMMI plant closure and subsequent sale, which will be reflected on the property tax rolls in FY 2011/12. The County Assessor is currently estimating roughly a 40% reduction in the assessed value for that particular property. The final determination of the new assessed value will likely not be made for at least a year because of the complexity of the transaction. On the positive side, the inflationary adjustment to assessed values permitted by Proposition 13 is 0.753% for FY 2011/12. This is a vast improvement compared to the negative 0.27% last year, and is one more indicator that the worst may be behind us. Based on all these factors, property tax revenues are projected to increase in FY 2011/12 by 1.5%, to \$62.8 million.

In contrast to the generally consistent property tax trend, sales tax trends are emblematic of the City's broader revenue volatility. After reaching a high point of \$33.2 million in FY 2000/01, sales tax revenues endured a multi-year decline to a low point of \$26.8 million in FY 2003/04. The steep drop was caused by the collapse of the Silicon Valley technology market and Fremont's reliance on sales tax from high-tech manufacturers. Since that time, sales tax from the high-tech and biotech sectors now appears to be stabilizing, and City efforts to diversify and strengthen our sales tax base by increasing the consumer retail sales and auto sales tax bases have also been productive.

As a result, we expect to see an 11.6% increase in our sales tax revenue in FY 2010/11, followed by a 4.9% increase in FY 2011/12, to \$31.3 million. The wide swings in sales tax are attributable to the "triple flip" portion of our sales tax. In FY 2009/10, the State determined that all cities had received more "triple flip" property tax replacement in the past than they should have, and this overpayment was corrected in FY 2009/10. As a result, the FY 2010/11 sales tax increase is overstated. When the "triple flip" portion is omitted from total sales tax, actual sales tax revenue is expected to increase by 6.3% in FY 2010/11, and by 5.5% in FY 2011/12.

In FY 2010/11, the City is expecting to use \$3.5 million from the Budget Uncertainty Reserve (down from the \$7.8 million anticipated at the time the FY 2010/11 budget was adopted in June 2010). Besides the beginning of recovery in our revenues, primarily sales tax, a key reason for this decreased use of the Budget Uncertainty Reserve is a lower actual debt service requirement for our variable rate debt than the amount that was originally budgeted in accordance with the debt covenants. Because this favorable experience has occurred for the past few years due to unusually low interest rates, the FY 2011/12 budget now includes a savings assumption with respect to the City's variable rate debt. In FY 2011/12,

\$2.8 million of the Budget Uncertainty Reserve is recommended for use to balance the budget, leaving a remaining balance in this reserve of \$4.6 million.

**Key Budget Assumptions:** Based on all the data we have at this time and economic forecasts from a range of sources, we are making the following key assumptions for the FY 2011/12 budget:

1. Because of the long, slow nature of this economic recovery, a combination of sustainable budget reductions and use of a portion of the Budget Uncertainty Reserve is proposed, resulting in a budget that is only 1.9% more than estimated actual expenditures the year before. When compared to the FY 2010/11 adopted budget, there is actually an expenditure decrease of 0.4%.
2. The local economy will generally hold steady and improve slightly during FY 2011/12, resulting in total General Fund resources (revenues and transfers in) increasing by 2.5% over estimated actual resources in FY 2010/11. This is in contrast to the more typical growth experienced in prior years of at least 4%.
3. The FY 2011/12 proposed budget includes a “placeholder” for employee compensation reductions and alternative service delivery savings of \$5.2 million. Those reductions and savings have yet to be specifically identified; discussions with all of the City’s employee bargaining units are currently underway but have not yet been completed.
4. Even with the savings “placeholder,” the costs of the FY 2011/12 budget will exceed projected resources, requiring the use of \$2.8 million of the City’s Budget Uncertainty Reserve to balance the budget.
5. Notwithstanding Proposition 22, which was passed by the voters in November 2010 and curtails the State’s ability to dip into local coffers to balance its budget, the unresolved State budget situation continues to be a threat, which means that this budget may be considered “provisional” in nature, and additional modifications may perhaps be needed during FY 2011/12.
6. Total expenditures in the FY 2011/12 budget include a savings assumption of \$1.1 million (approximately 1% of total budgeted expenditures in FY 2011/12) to compensate for the historical tendency to under-spend total allocated resources because of things like salary savings from vacant positions. In addition, there is also a savings assumption of \$1.5 million to offset the additional appropriations required with respect to the City’s variable rate debt, in accordance with debt covenants.
7. The FY 2011/12 budget does not include any prefunding of the City’s other post-employment benefit (OPEB) liabilities, nor does it include any contribution to capital projects. Funding for these items will not be included in the budget until such time as the economic situation has stabilized and sufficient resources are once again available.
8. The General Fund’s primary reserves, which total 12.5% of total expenditures and transfers out, will remain intact for FY 2011/12. However, \$2.8 million from the Budget Uncertainty Reserve will be spent.

**Operational Impacts and Challenges:** Services currently performed by the City, the manner in which they are performed, and the methods used to compensate employees for that work are a reflection of past practices. These practices evolved from a combination of the more positive fiscal environment in which they were adopted, past competitive labor markets and different economic assumptions. While these practices were appropriate in the context of the time in which they were adopted, negotiated or approved, they are no longer aligned to the current fiscal environment. Given the projected General Fund deficit for next fiscal year, the multiple years of budget contraction, the previous utilization of reserves, and rising personnel costs, the City needs to implement long-term fixes to the budget.

**Budget Development Strategies:** Major budget development strategies for solving the deficit can be grouped into four main categories:

- Reduction in overall employee compensation expenses;
- Transition to alternative service delivery models;
- Reduction or elimination of services to the community; and,
- Revenue enhancements.

Each of these categories is discussed below in a summary fashion. The objective of these summaries is to introduce and provide context to the concepts or approaches.

**Reduction in Overall Employee Compensation Expenses:** Although employees have not received salary increases for two fiscal years, the City has incurred increased personnel expenses in the form of increases in employer-funded health care benefits (the HBA allowance) and the employer-funded portion of retirement contributions. The current fiscal environment requires the City to look at the total cost of employee compensation. Examples of this strategy include the following (in no particular order):

- Reducing salaries on a one-time and/or on-going basis;
- Increasing employee contributions toward retirement;
- Increasing employee contributions to health care benefits;
- Initiating employee wellness incentives;
- Optimizing job functions;
- Re-evaluating deployment or work schedules;
- Changing MOU provisions that increase the cost of service delivery, such as overtime payments that exceed FLSA requirements; and,
- Introducing lower cost pension and healthcare plans for new employees.

**Transition to Alternative Service Delivery Models:** Looking at how employees currently perform their work will be necessary as options are assessed. To this end, the City has engaged an experienced, public sector-focused management consultant to assist staff in conducting a strategic sustainability study, taking a targeted look at City operations. The goal is to evaluate how key services are currently delivered, compare Fremont's operations to other municipal best practices, and recommend less costly alternatives to the City's current models. Topical areas of focus for this strategic sustainability study include the following:

- Examining key services that may be better provided through a contractual relationship with a private sector vendor, non-profit organization or other local jurisdiction;

- Exploring shared-service models and/or consolidating services with other cities or the county;
- Reviewing opportunities for internal consolidations and efficiencies;
- Looking at employee work schedules to achieve an optimum deployment of City staff; and,
- Considering whether some work currently performed by sworn staff could be performed by non-sworn staff.

**Reduction or Elimination of Services to the Community:** The number and types of services the City provides also need to be examined. To the degree that the two preceding strategies of reducing total compensation and finding alternative service delivery models cannot address the budget gap, this particular strategy will become more important.

Since FY 2002/03, the City has been reducing expenditures and downsizing the organization to keep pace with the reduction in revenues, primarily due to the Silicon Valley business slump and then the Great Recession. In doing so, we have tried to preserve, as best we could, police, fire, and maintenance services, which together account for 90% of General Fund expenditures. The City has made major changes to operations, closed or browned-out fire stations, closed the fire dispatch center and moved to a regional center, reduced police special units and focused on patrol and investigations, reduced crime lab operations, stopped funding extra library hours, eliminated approximately 300 positions, furloughed employees, and generally cut back across the board.

The organization is already lean and has one of the lowest employee per 1,000 residents staffing ratios in the Bay Area. As a result, a simple cookie-cutter percentage reduction to services will not be effective. Instead, Council will need to consider program and service elimination.

The average cost of employees has continued to grow. The chart below shows the average cost per employee, separated into public safety, miscellaneous, and a combined average.

<b>Average Cost of City Employees</b>				
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Public Safety</b>	\$134,477	\$144,797	\$149,647	\$160,427
<b>Miscellaneous</b>	104,567	110,692	109,211	116,488
<b>All Employees</b>	115,593	123,555	124,244	<b><u>133,210</u></b>

The FY 2011/12 projected deficit of \$8.0 million equates to over 60 positions that would need to be eliminated to balance the budget through the implementation of this strategy alone, using the 2010 combined average cost of all City employees.

$$\frac{\$8.0 \text{ Million FY 2011/12 Deficit}}{\text{Average Cost of All Employees of \$133,210}} = 60 \text{ FTE}$$

It is staff's recommendation to not pursue this option unless a structural gap remains after the first two options have been exhausted.

**Revenue Enhancements:** A final, but important, strategy to consider is looking for opportunities to enhance revenue generation for the City. Although many of these options may not be achievable by the

time of budget adoption, they may be worthy of consideration given the current fiscal environment. These options could include continuing aggressive economic development efforts currently underway, implementing full cost recovery for more programs, increasing rates for City facilities to be closer to market rates, and evaluating the existing fee and tax structures for relative competitiveness to other Bay Area large cities. Any consideration of revenue enhancements, such as a new tax, would likely require both prior action on the three preceding strategies and significant public outreach to prepare for the applicable ballot initiatives.

**Strategic Sustainability:** There is a budget “placeholder” of \$5.2 million in budget balancing strategies that have not yet been identified, but are the subject of negotiations currently underway with all employee bargaining units. The goal is to identify and implement these strategies by July 1, 2011. Some of these items may take a toll on the organization and our ability to provide services internally and to the community. However, they will also result in a balanced budget for FY 2011/12 and into the future.

Even as we struggle to provide services to the community, we face another challenge in the increasing cost of maintaining Fremont’s infrastructure. This is primarily due to three factors. First, as Fremont ages, so does its public infrastructure. The majority of Fremont’s public infrastructure was constructed many years ago and now requires either an increased level or frequency of repairs, compounded by not having had adequate resources to spend on street maintenance in the past. Second, as Fremont continues to grow, additional infrastructure is added that must be maintained, further stretching the City’s limited maintenance resources. Finally, new requirements result in increased costs. Some of these requirements are voluntary, such as the City’s continued move toward greater sustainability. Although sustainability programs such as improved energy efficiency will eventually save money and reduce greenhouse gas emissions, in the near term there are increased transitional costs. Other maintenance requirements, which are regulatory in nature, have increased dramatically over the last few years, and have added significant costs to City operations.

**Major City Initiatives:** Although the City’s current economic climate is sobering, affecting the breadth and depth of services offered to the community, there are many important initiatives currently underway. These initiatives are important investments in the community’s future and position the City well for long-term growth and stability. Notwithstanding the impacts of budget reductions, City staff must continue to proactively move these important initiatives forward.

**Development:** There are a number of significant development projects and initiatives underway. These are all important elements of our sales tax diversification strategy.

**South Fremont/Warm Springs Area:** The 2010 closure of the automobile plant formerly operated by NUMMI both presents challenges and creates opportunities. In order to develop a strategy for this site and surrounding areas, the City applied for and received a \$333,000 grant from the United States Economic Development Administration (EDA) in April 2010. These grant funds are being used to complete a series of four studies to develop a strategic plan for the reuse and revitalization of the Warm Springs/South Fremont area of over 850 acres that surrounds the future Warm Springs BART station and includes the automobile plant.



In May 2010, the 5.5 million square foot plant was purchased by Tesla Motors (the site is now known as the Tesla Factory) and they are expected to begin manufacturing the Model S Sedan in early 2012. In addition, over 170 acres of vacant land surrounding the plant has been purchased by Union Pacific Railroad to expand freight rail service. The purchase of these parcels has necessitated a change in the study scope, as the City adjusts land use alternatives to reflect the new ownership and determine how best to strategically develop this area.

In addition to these studies, the City has applied for a Priority Development Area designation from the Association of Bay Area Governments. The strategic location of this area with convenient Interstate freeway access, rail access, and public transit (via the future Warm Springs BART station and bus service) presents an unparalleled opportunity for economic development and new jobs in the Bay Area. The studies are expected to be complete in late 2011, and the results will be integrated into a Specific or Community Plan, as well as the new General Plan.

**Downtown/Capitol Avenue:** The Downtown/Capitol Avenue project is a “Main Street” style pedestrian-oriented mixed-use development focused in the area bounded by Fremont Boulevard, Mowry Avenue, Paseo Padre Parkway, and Walnut Avenue. Staff is currently working with TMG Partners on the development of a Community Plan and Design Guidelines for this downtown district, and associated environmental review is underway. When completed in the fall of 2011, these documents will provide the necessary certainty for developers as to the type of project that can be developed and will help expedite the approval process, saving both time and money. Currently, a financial and fiscal analysis is underway and implementation strategies will be developed so that the vision of this project can be brought to fruition.

**Retail Centers:** Pacific Commons is an 880,000 square-foot regional power center located at I-880 and Auto Mall Parkway. This past year the center has seen significant investment and plans for expansion, as both Nordstrom Rack and Toys R Us/Babies R Us have leased long-vacant, large spaces. In addition to increased occupancy, construction is about to begin on over 300,000 square feet of new space that includes a new Target store and a new 16-screen Century movie theater. These will both anchor a new phase of Pacific Commons known as “the Block.” This new phase has been approved and the City will work closely with the developer to secure tenants to speed construction of this new pedestrian and entertainment focused section of the center.

**Emerging Technology:** Fremont’s emerging “clean and green” technology cluster continues to expand, most notably with the completion of the 300,000 square foot Solyndra manufacturing plant. Other solar and clean technology firms have been leasing space in Fremont and planning expansions, including Solaria and Intematix. Staff is actively marketing Fremont as a clean tech “hub.” Fremont’s biotech and medical device industry cluster remains stable, with firms continuing to make investments in their facilities. Staff seeks opportunities and continues to meet with potential businesses and market local sites. The establishment of these various technology clusters promotes business-to-business opportunities, helping employment and the City’s sales tax revenues.

**Local Business Stimulus Package:** In March 2009, the City created a Local Business Stimulus Package designed to help existing Fremont businesses and provide incentives to attract new businesses to Fremont during these difficult economic times. This program has been widely marketed and has yielded positive results. The Fremont Local Business Stimulus Package was recognized in April 2011

by the California Association for Local Economic Development (CALED) as the Grand Prize Winner for Economic Development Programs. The results of the 2009 Local Business Stimulus Package include the following:

- **Fee Reduction:** The City has reduced \$945,000 (\$339,000 of which is pending) worth of impact fees. Building permits for the urban housing development in the Central Business District will be issued in a few months. Total impact fees for this development are estimated to be around \$8 million; however, with a 50% reduction, the developer will end up paying approximately \$4 million and the City will forego the remaining \$4 million. Thirty-eight businesses have taken advantage of the fee reduction program.
- **Fee Deferral:** The City has deferred approximately \$8.3 million in impact fees for nine residential developments, three businesses, and two single family residences. The residential development community has shared with staff that the fee deferral program has been the most beneficial due to the fact that it reduces upfront costs needed to start a project.
- **Clean Technology Tax Exemption:** Six clean technology firms have participated in the tax exemption program, including Solyndra, Solaria, Renewable Energy Test Center (RETC), Greenvolts, Sierra Solar Power and Intematix. Total revenue loss is estimated to be \$32,000. However, the City has benefitted from increased sales tax revenues, decreased vacancy rates, and increased employment.
- **Local Business Purchasing Preference:** The local business purchasing preference program has had minimal participation, but also has minimal cost to the City. This program increased the local business purchasing preference to 5%. Out of 44 bids, four included Fremont businesses, and two were awarded to local vendors. One vendor was awarded the bid due to the purchasing preference, the other was already the lowest bidder and the preference was not a factor. The net cost to the City has been just over \$1,200. This program ended in December 2010 and the local business purchasing preference has reverted to 2.5%.

***General Plan Update:*** State law requires cities to adopt a comprehensive General Plan, which serves as the “constitution” for all future development decisions in the community. In FY 2007/08, the City began working on an update to its General Plan, which was last comprehensively rewritten in 1991. As part of that effort, staff sought extensive community input, completed several technical studies, and held a series of study sessions with the City Council and the Planning Commission on land use policy issues. In FY 2010/11, the City issued the draft General Plan and an accompanying user-friendly “Vision Book” that together lay the groundwork for achieving the community’s shared vision. Staff also held several community workshops to publicize the draft Plan, and began the Environmental Impact Report (EIR). Based on community input and the results of the EIR, staff will revise the draft Plan as necessary for final adoption by the City Council in FY 2011/12.

***Redevelopment:*** Several exciting redevelopment projects are underway. All of these projects will help revitalize the Redevelopment Project Areas and bring new revenue into Fremont. Although the Governor has proposed the elimination of redevelopment as a State budget balancing strategy, that effort has so far been unsuccessful. Whether it will ultimately occur with the adoption of the State’s FY

2011/12 budget is unknown at this time. In the meantime, staff is continuing to work on redevelopment projects to accomplish as much as possible in advance of any actions the State might take.

**Centerville:** One of the largest projects underway in the Centerville district is the anticipated development of the Agency-owned Centerville Unified Site, located on a 6.6-acre site along Fremont Boulevard near Thornton Avenue. The Agency has selected a developer for the site, is negotiating a disposition and development agreement, and anticipates commencing the entitlement process for a new development. This development is proposed to be a public/private partnership between the selected developer and the Redevelopment Agency, focused on creating a mix of uses and featuring public gathering space and architectural design consistent with the character of Centerville.

**Irvington:** The Grimmer Greenbelt Gateway project will create a meandering landscaped pedestrian and bicycle path from Fremont Boulevard across Paseo Padre Parkway to Central Park. A portion of this project is complete, and development of the preliminary design and cost estimates for the next phase will occur in FY 2011/12.

The most significant and highest profile project slated for the Irvington district is the construction of the Irvington BART Station. The 2010 Plan Amendment guarantees the Agency will have sufficient revenue to fund debt service on a tax allocation bond (TAB) issue, which the Agency has been planning on for years to fund the capital improvements. During FY 2011/12, the Agency plans to conclude negotiations with BART, complete the bond issuance, and commence design work.

**Niles:** The environmental remediation of the former Union Pacific rail yard is now substantially complete, but the consideration of any future use for the site is on hold pending improvements in the local real estate market. Instead, the Agency is continuing its efforts in Niles to improve the existing infrastructure. This will include the reconstruction of H Street between Niles Boulevard and Second Street, as well as improvements to the alleyway serving the commercial district. The Agency is also considering improvements to the entrance to the Niles District, including pedestrian safety improvements to the Sullivan Underpass, in an effort to mitigate the negative effects of Niles' geographical isolation from the rest of Fremont and the surrounding area.

**Capital Projects:** Despite the challenges in the City's General Fund, we continue to work on a variety of major capital projects. These projects can proceed because, for the most part, they do not rely on the City's General Fund. Rather, their funding comes from such sources as redevelopment tax increment, traffic impact fees, State and regional sources, and the Fire Safety Bond (Measure R) approved by Fremont voters in 2002.

**Pavement Overlay Project:** This summer, the City will use \$3.14 million of Federal Surface Transportation Program/Congestion Mitigation and Air Quality Improvement (STP/CMAQ) funds to rehabilitate 1) Paseo Padre Parkway between Mowry Avenue and Stevenson Boulevard, and 2) Mission Boulevard between Pine Street and South Grimmer Boulevard, for a total length of 2.0 road miles.

**Niles Boulevard Reconstruction:** Next year, the City will rehabilitate Niles Boulevard between the Sullivan Underpass and Hillview Drive. This \$3.4 million project will be funded through State Gas Tax, Measure B, Proposition 42 and Redevelopment funds. This project is expected to start in spring 2012 and be completed by fall 2012.

**Sabercat Creek Restoration:** In June 2008, the City was awarded a \$1.17 million grant from the State of California River Parkways Grant program, which will provide the majority of the capital funding needed for this \$1.85 million creek restoration project. The remaining funding for this project will come from the Urban Runoff Program and a contribution from the Alameda County Flood Control & Water Conservation District (ACFC & WCD). This will improve public access and enjoyment of this park, restore the creek and surrounding riparian habitat and improve water quality. Construction of this project will commence in summer 2011 and be completed by the end of the fiscal year.

**Niles Bridge Replacement:** The \$12 million Niles Bridge Replacement Project will be mainly funded through \$10 million of Federal Highway Bridge Rehabilitation and Replacement (HBRR) funds. Other sources of funding will include Proposition 1B and State Gas Tax. This project is expected to start late in 2011 and be completed by the end of 2012.

**Downtown/Capitol Avenue Catalyst Project:** The City received a \$1.6 million Transportation for Livable Communities (TLC) grant to construct streetscape improvements in the block bounded by Walnut Avenue, Liberty Street, Beacon Street and (planned) State Street. The first phase of this project is scheduled to start this summer.

**Intersection Improvements and Infrastructure Upgrade:** In FY 2011/12, the City will modify three major intersections (Blacow/Central, Fremont/Walnut and Mowry/State) to improve traffic safety and traffic flow at a total cost of \$2.1 million, funded through Traffic Impact Fees.

**Bicycle and Pedestrian Capital Projects:** In FY 2011/12, the City will start construction on four major bicycle and pedestrian projects. Three of the projects are near schools (two near Ardenwood Elementary School and one near Leitch Elementary School), and one is near the Hub Shopping Center. The total cost of the projects is about \$1.8 million, funded through Measure B Bicycle and Pedestrian funds and various grants.

**Fire Safety Bond Projects:** In November 2002, Fremont voters approved Measure R by 74.4%, thereby authorizing the City to issue \$51 million in general obligation bonds, to be repaid by a property tax levy. Proceeds from these bonds are to be used to replace three fire stations, build public safety training facilities, and make remodeling and seismic improvements to seven existing fire stations. To date, all \$51 million in bonds has been issued, and new Station 8 in North Fremont, Station 6 in Centerville, and Station 2 in Niles have been completed.

Of the stations being remodeled, six are complete (Station 1 in the Central Business District, Station 4 at Pine Street and Paseo Padre Parkway, Station 5 in Warm Springs, Station 7 at Grimmer Boulevard and Auto Mall Parkway, Station 9 at Stevenson Place, and Station 10 in Ardenwood). The remodel of Station 3 in Irvington, which is the last fire station project, began construction in June 2010 and is expected to be completed this summer. The separate public safety training facilities consist of a Police firing range and training room, Fire training classrooms, and a Fire tactical training facility. The Fire training classrooms, which were part of the Building "A" Fire Administration project (funded with non-fire bond money), were completed in April 2009. The Fire tactical training facility began construction in May 2009 and was completed in June 2010. The Police firing range began construction in April 2009 and was completed in November 2010.

**Community Services:** Several projects are underway or about to begin that enhance the lives of our citizens, increase safety and park usability, and reduce maintenance costs.

**Playgrounds:** The final phase of a multi-year effort to bring City playgrounds into compliance with current playground safety standards and minimize maintenance will be completed. Seven City play areas and three Tiny Tot play areas will be upgraded. The sand or fibar surfaces of these playgrounds will be replaced with poured-in-place recycled rubber, which is projected to reduce the collective number of hours necessary to maintain these playgrounds by 730.

**Sports Fields:** Design and conversion of Nordvik and Centerville Park's Softball Fields to all-weather turf will be completed. This will reduce maintenance costs and quadruple field availability. Nordvik will be able to accommodate a full-size soccer field and is anticipated to be almost 100% booked in prime-time by the end of the first year of operation.

**Patterson House:** Renovation of the historic Patterson House will be completed with foundation repairs, electrical wiring upgrades, and new heating/air conditioning systems in order to preserve one of Fremont's treasured assets while making it safe and comfortable for public use. Much of this work will be funded with proceeds from East Bay Regional Park District's Measure WW, approved by voters in November 2008.

**Conclusion:** Fremont has long prided itself on being a lean organization, making the most of the resources entrusted to us. The prolonged recession has forced us to make hard choices about which services we will provide to the community, and how we will provide them. Fiscal discipline and wise stewardship over many years have made it possible for us to take a balanced approach as we strategically reset our service levels.

**ENCLOSURE:** None

**RECOMMENDATION:**

1. Hold a public hearing.
2. Provide direction to staff on issues pertaining to the FY 2011/12 proposed operating budget.

## 5.2 PUBLIC HEARING ON FY 2011/12 - 2015/16 CIP BUDGET

### First Public Hearing and Council Direction to Staff on the Proposed FY 2011/12 - 2015/16 Capital Improvement Program (CIP) Budget

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**Executive Summary:** The development of the FY2011/12 – 2015/16 Capital Improvement Program (CIP) began in the summer of 2010. The City Council has thus far held two meetings to review the results of the process that created the list of projects proposed for funding during the five-year period of this plan. The City Council last reviewed the CIP on April 5, 2011, at which time Council reviewed the list of projects proposed for funding and requested no changes. This report presents the same 5-year CIP plan, with the addition of specific project appropriations for the first two years of the CIP (FY 2011/12 and FY 2012/13). In addition, because several of the funding sources are part of “Fund Groups” that include several specific fund types, this report proposes the specific fund types to be appropriated to each project based upon which project best meets the requirements of each fund type. The purpose of this first public hearing is to receive any additional comments on the proposed CIP.

**BACKGROUND:** The CIP development process involves a comprehensive internal project planning effort, and multiple opportunities for the City Council to review the progress of the CIP development and to provide direction to staff. At the January 11, 2011 City Council meeting, staff presented an overview of the CIP process, initial capital revenue projections, and recommendations of specific projects to proceed in the CIP process and receive further costing and scoping. Staff also provided a status report for all ongoing City capital projects (PWCs). Following the January 11, 2011 meeting, staff refined revenue projections, project costs estimates and project funding level recommendations. At the April 5, 2011 meeting, the City Council received a revised project listing, along with the funding timeline for each project. On May 26, 2011, the Planning Commission reviewed the CIP for the purpose of evaluating and ensuring project compliance with the General Plan, as required by State law. Following this public hearing, the City Council will consider formal adoption of the FY 2011/12 – 2015/16 CIP at a second public hearing scheduled for June 14, 2011.

#### DISCUSSION/ANALYSIS:

**Overview:** The FY 2011/12 - 2015/16 CIP is an austere capital budget compared to the last few capital improvement programs. In previous CIP budget cycles, staff held a citywide call for projects from each department. In the development of this CIP, because of reduced revenue projections, staff limited its consideration for projects to basic ongoing capital maintenance and continuing priority projects. This was most evident in the case of projects funded by the unrestricted Capital Improvement Fund 501, which funds basic infrastructure maintenance and repairs. The \$6.5 million in funds available over 5 years is down from the \$19 million in funds projected in the 2009 CIP. Instead of prioritizing new projects to fund over others based on several criteria, staff and Council are only able to consider how to best allocate the limited funds across ongoing capital maintenance projects. In attempting to continue

maintenance programs as long as possible, staff followed a strategy of not programming new funding to a project in the first two years of the plan if an adequate balance existed from previous appropriations. Funding of projects is recommended at the minimum levels for the first three years of the plan, at which time funds are insufficient to fund every maintenance program for the fourth and fifth year. Without basic maintenance repairs, deferred maintenance costs will increase, and repairs will become more expensive in the future. Hopefully, the funding picture will be brighter in two years when the CIP will be updated and additional unrestricted Capital Improvement Fund 501 revenue could be available to continue maintenance programs.

While funding for projects typically funded through Unrestricted Fund 501 was reduced as the result of severely decreased General Fund revenues and interest earnings, Streets and Parks funding was able to be kept at similar levels to that in the previous CIP due to one-time revenue from Measure WW (Parks) and a new County-wide Vehicle Registration Fee (Streets). If not for these one-time or new revenue sources, funding for parks projects and for basic street maintenance would be down, as well.

The Redevelopment Cap Amendment was approved since the last CIP was passed by Council in 2009. Accordingly, the Redevelopment Agency is proposing funding for transportation infrastructure improvement projects, highlighted by over \$120,000,000 programmed to the proposed Irvington BART station. However, the future of redevelopment remains unclear, and the viability of the projects is contingent upon the continuation of redevelopment in the coming fiscal year.

**CIP Funding Sources:** Revenue projections are unchanged from the information presented to the Council in April.

***Capital Improvement Fund 501 (Unrestricted):*** This CIP fund is unrestricted and can be used for any capital project designated by the City Council. This portion of the CIP budget draws funding from a variety of sources, including the City's General Fund, interest earnings, unappropriated fund balance, fund transfers and proceeds from unexpended funds from project closeouts. Staff estimates that this fund will have approximately \$6.5 million available over the next five years for capital projects. This includes \$1.6 million in beginning fund balance, much of which is comprised of Local Improvement District surplus funds, interest earnings, and previous closeouts of CIP projects back to fund balance. The City's only contribution from the General Fund is the \$2.5 million programmed over the five years of the plan toward the development of the City's Downtown Project. No General Fund contributions are proposed for appropriation in the first two years of the CIP for other capital projects.

***Gas Tax Fund Group:*** Revenue in this fund group comes from the City's share of the State-collected gasoline taxes, funds from the Measure B half-cent sales tax for transportation-related expenditures, and the new county-wide Vehicle Registration Fee. The City can only use these funds for street maintenance and other transportation improvement projects. Staff estimates that this fund group will have approximately \$41.2 million available over the next five years for capital projects. This includes over \$40.3 million in new revenues, \$566,000 in beginning Fund balance and \$366,000 in interest earnings. Total funds available in the Gas Tax group are down approximately \$7 million and continue to not adequately meet Fremont's roads and infrastructure needs.

***Traffic Impact Fee (TIF):*** This fund group accounts for monies received from developers to mitigate impacts on the City's transportation networks resulting from new development. The funds reflect new

development's share of the cost of street improvements, interchanges, and other traffic infrastructure improvements. Over the next five years, staff estimates that the total available resources for this fund group will be \$12.1 million. Staff based these estimates on projected residential and non-residential construction activity and interest earnings over the next five years. Year to year, the traffic impact fee fund amount available is variable based on development activity. This amount includes an anticipated \$3.7 million in TIF funds available from the close out of the Grade Separation project.

***Bike and Pedestrian Fund Group:*** This fund group accounts for Alameda County Measure B funds and funds from the new county-wide Vehicle Registration Fee dedicated specifically to bicycle and pedestrian projects. The City can only use these funds for transportation improvement projects that positively impact the flow of bicycle and pedestrian traffic throughout the City. Staff estimates that this fund group will have approximately \$2.92 million available over the next five years for capital projects. This includes \$2.8 million in new revenues, \$67,000 in estimated beginning fund balance, and \$52,000 in interest earnings.

***Park Facilities and Development Fund Group:*** This fund group accounts for monies received from developers to mitigate impacts on the parks system resulting from new development and population growth. According to State law, these funds can only be used to expand existing parks or to develop newly acquired parkland. Staff based these revenue estimates on projected residential construction activity and interest earnings over the next five years. For this CIP cycle, this fund group also includes projects funded by Measure WW. This fund group is expected to have approximately \$15.4 million available over the five-year CIP period. The funds available include \$2.7 million in beginning fund balances, \$7.4 million in revenues from collected fees, \$4.7 million in Measure WW funding and \$600,000 in interest earnings.

***Park Dedication In-Lieu Fees:*** This fund group accounts for monies received from developers to acquire additional parkland within the City. Based on staff estimates, this fund will have approximately \$26.8 million available over the five-year CIP period to acquire parkland. Beginning fund balance comprises \$20.6 million of this amount, while new fees and interest earnings generate \$5.8 million and \$400,000 respectively. This plan does not include appropriations for acquisition of any specific projects or potential park sites during the next five years. The City will hold the funds in an account until an appropriate site for acquisition is found. Whenever desirable sites are available for acquisition, staff will return to the City Council for approval and specific appropriation authority.

***Redevelopment Agency Fund Group:*** This fund group includes revenue available from the City's Redevelopment Agency to pay for its capital projects. The major sources of revenues in this fund group are from property tax increment and proceeds from the issuance of tax allocation bonds issued by the Redevelopment Agency. Staff estimates this fund group will have approximately \$135.9 million in available capital resources over the five-year CIP period. Funding for these projects programmed for redevelopment funding will be contingent upon the continuation of local redevelopment agencies and an approximate \$140 million bond sale for construction of the Irvington BART station.

***Committed/Restricted Funds:*** This fund group accounts for funds the City projects to receive from State, federal and other agencies to fully or partially fund specific capital projects. It also lists internal restricted City funds available for specified purposes within the plan. Estimates of the total funding programmed to projects in this group are \$1.6 million. The funds available in this group include grants



from the Federal Highway Safety Improvement Program (HSIP) and the Transportation for Clean Air (TFCA) for traffic improvements, as well as the Development Cost Center Technology Reserve. These outside funding sources help to relieve the pressure on other available CIP funding sources.

**Underfunded and Unfunded Needs:** The proposed FY 2011/12 - 2015/16 CIP does not represent the full picture of project funding needs. From the beginning of the development of this CIP, staff was aware of the funding challenges and, accordingly, considered a list of projects that balanced the amount of funds available with making a meaningful, but limited, impact on the needed capital improvements and deferred maintenance. For example, the cost of bringing the street pavement condition back to “Good”, as measured by a PCI of 83, would be approximately \$350 million, which is clearly beyond the City’s available or projected financial resources. Staff has continued to first focus attention on existing State and local funding sources, which are declining and constrained, and will continue to search for other sources and mechanisms for meeting some of the unfunded needs outlined in this plan. Additionally, many projects shown in this CIP, while receiving funding, are funded at minimal levels rather than at their fully funded needs.

**FISCAL IMPACT:** Adoption of the CIP at the second public hearing will appropriate funds for capital projects and maintenance programs for Fiscal Years 2011/12 and 2012/13.

**ENVIRONMENTAL REVIEW:** The adoption of the Capital Improvement Program itself is not an action subject to the California Environmental Quality Act (CEQA). There will be subsequent environmental analysis upon further development of the various projects.

**ENCLOSURE:** [Draft FY 2011/12 - 2015/16 Proposed CIP](#)

**RECOMMENDATIONS:**

1. Hold a public hearing.
2. Receive and consider all capital improvement projects proposed for the Five-Year FY2011/12-2015/16 CIP.
3. Provide direction as needed on the FY2011/12-2015/16 proposed CIP, for consideration on June 14, 2011.

### 5.3 APPEAL OF PLANNING COMMISSION APPROVAL OF ZONING ADMINISTRATOR PERMIT FOR A DANCE SCHOOL –43725 BOSCELL ROAD

**Public Hearing (Published Notice) to Consider a Third Party Appeal of a Planning Commission Decision to Uphold the Approval of a Zoning Administrator Permit to Allow a Dance School in the Pacific Commons Shopping Center (PLN2011-00133)**

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**Executive Summary:** On March 21, 2011 the Zoning Administrator approved a Dance School located at 43725 Boscell Road in the Pacific Commons Shopping Center based on the considerations set forth in the Fremont Municipal Code for approval of Zoning Administrator Permits and subject to conditions. The approval of the permit was appealed by the operator of another dance school on March 28, 2011, citing concerns related to business competition, noise and parking issues. On April 28, 2011, the Planning Commission denied the third party appeal and approved the Zoning Administrator Permit. On May 6, 2011, the same appellant appealed the decision of the Planning Commission on the sole grounds that another dance school located within 2 miles from their school would create unhealthy business competition (Informational 2).

Staff believes concerns over economic competition between businesses is insufficient grounds for denial, and recommends that the Council uphold the decisions of the Planning Commission and Zoning Administrator and deny the appeal.

**BACKGROUND:** The building that will house the dance school was constructed in 2007-2008. The building contains three separate suites, two of which are already occupied by retail businesses, and is part of Planning Area 4B of the Pacific Commons Planned District. In an effort to reduce vacancies in Pacific Commons, on March 2, 2010 the City Council approved a Planned District Major Amendment (PLN2010-00114) allowing a number of additional land uses to locate within the center which were not permitted under the original Planned District approval and limited uses such as a dance school/school to maximum of 7,700 square foot in Planning Area 4B. Under the amended Planned District regulations, services such as dance schools and schools require a Zoning Administrative Permit. The proposed use is the first of its kind in the Planning Area 4B and occupies 3,400 square foot tenant space. The tenant space is located at 43725 Boscell Road which was previously occupied as a retail store and has been closed since 2008. There is no history of planning entitlements associated with the tenant space. On March 21, 2011 the Zoning Administrator approved a Dance School subject to conditions. The Zoning Administrator's decision was based upon the project's consistency with General Plan, Planned District zoning as well as its ability to meet the considerations for granting a Zoning Administrator Use Permit as set forth in the Fremont Municipal Code. Specifically, the size of the use and hours of operation were found to be compatible with its surroundings, subject to conditions (Exhibit "B") to ensure that any potential adverse effects were avoided.

On March 29, 2011, Laura Fan and Hristo Minev appealed the Zoning Administrator's granting the Zoning Administrator Use Permit. On April 28, 2011, the Planning Commission denied the third party appeal and approved the Zoning Administrator Permit. On May 6, 2011, the same appellant appealed the decision of the Planning Commission to uphold the approval of the Zoning Administrator Permit.

#### **DISCUSSION/ANALYSIS:**

***Project Description:*** The applicant is proposing to operate a dance school at 43725 Boscell Road in Planning Area 4B of Pacific Commons at the southeast corner of Boscell Road and Auto Mall Parkway (*Exhibit A*). The dance school will offer classes in all ballroom, swing (salsa, hustle and West Coast swing) and club dances along with fitness classes such as Zumba, line dances and aerobics/fitness instructional services. The classes would be categorized as private instruction dance classes for groups of 10 to 30 students and social practice party for seniors and others. The social practice party would involve an hour of complementary class followed by two hours of social practice.

Business hours will generally run from 9:00 AM to 9:00 PM seven days a week. The applicant expects to employ up to four (4) instructors.

The subject tenant space measures 3,400 square feet and is currently vacant. The applicant's floor plan features a reception area, office space and restrooms. No changes will be made to either the site or the exterior of the building.

#### ***General Plan Conformance:***

The General Plan land use designation for the site is Restricted Industrial with a Commercial-Industrial Overlay. This land use designation is intended to allow for industrial uses whose daily operations typically have minimal impacts on neighboring properties, as well as various commercial uses which typically support such industrial businesses. When the Pacific Commons development was approved, it was understood that a wide variety of retail and service uses would occupy the development.

Pacific Commons shopping center offers a wide variety of retail and services; allowing the proposed dance school to locate at the subject site would provide a convenient service that would be used by local residents and employees of the surrounding industrial area and the proposed use is compatible to the existing uses within the Pacific Commons Retail District. By locating in an already established retail center, the proposed business will serve to enhance the diversity of goods and services available to consumers.

#### ***Zoning Compliance Analysis:***

The project site is located within Planned District P-2000-214 (Pacific Commons) as amended through PLN2003-00166 and PLN2010-00114. This district was established to allow for a variety of retail and service uses which serve the everyday and specialized needs of both the local community and the larger region as a whole. Under the amended Planned District regulations, services such as dance schools and schools require a Zoning Administrative Permit.

#### ***Parking***

The City computes the parking requirements for tenants in shopping centers not on an individual basis but rather by dividing the entire leasable floor area of the shopping center by one fixed rate. The parking requirement for shopping centers is one (1) space for each 250 square feet of gross leasable

floor area. The area of Pacific Commons where the subject space is located (Planning Area 4) consists of nine buildings totaling a combined 171,330 square feet of commercial/retail space and containing 736 parking spaces. Per the City's parking requirements, the number of spaces needed for the buildings is 685, so there is a surplus of more than 51 spaces available in the immediate area. Furthermore, the amount of traffic typically generated by this dance school/school does not differ significantly from retail or other personal service businesses. As such, parking availability on the site will not be significantly impacted by the introduction of the proposed use to this area of the shopping center.

In accordance with the Fremont Municipal Code, the zoning administrator, and now upon appeal, the City Council, shall consider the following in making a determination on the application:

- (a) The suitability and adequacy of the site for the proposed use;
- (b) The estimated effect of the proposed use or design on traffic circulation and on the planned capacity of the street system and on other public facilities or services;
- (c) The estimated economic effect of the proposed use on nearby uses;
- (d) The estimated impact of the proposed use on the general welfare of persons residing within the community; and
- (e) The compatibility of design with adjacent uses within the district and its surroundings.

Staff and the Planning Commission recommend the following rationale for approving/upholding the Zoning Administrator Permit:

1. The proposed use is consistent with the General Plan and zoning regulations in that the proposed dance school/fitness instruction use is allowed within the Restricted Industrial (Commercial-Industrial) land use designation and complies with the requirements set forth in the Pacific Commons Planned District regulations;
2. The site is suitable and adequate for the proposed use in that it is located in a large shopping center containing a wide variety of retail and service businesses which are compatible with a dance school/fitness instruction services. Furthermore, there is ample parking for the proposed use as well as the other tenants in this portion of the center, and the tenant space already meets all of the applicable building and fire safety codes governing the proposed use, so no significant modifications to the building or changes to the site need be made to accommodate the business;
3. The proposed use and design would not have a substantial adverse effect on vehicular, bicycle, or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services in that the dance school use will not generate significantly more daily trips on the surrounding roadway network than what the shopping center's mix of tenants was originally expected to generate, and it will not change existing sidewalk or bike lane layouts or result in the alteration or removal of any existing transit stops adjacent to the site;
4. The proposed use would not have a substantial adverse economic effect on nearby uses in that it will complement the mix of uses within the shopping center, likely attracting additional people to the shopping center who may patronize the other businesses before or after their classes, and the owners will be required to ensure that the facility only engages in providing private instruction, dance classes, fitness instructional services and minor retail sale of instruction related items including but limited to shoes, recorded music and dance/fitness accessories;

5. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large in that the nature of the business is such that it will not generate traffic, noise, or other undesirable or harmful byproducts that might adversely impact the health and welfare of the neighboring businesses and the City's residents.
6. The compatibility of design with adjacent uses within the district and its surroundings will not be effected as the use will occupy an existing building and no exterior changes (excepting for new signage) are proposed.

*Planning Commission Action:* On April 28, 2011, the Planning Commission voted unanimously to deny the appeal and approve the Zoning Administrator Permit to allow a dance school at 43725 Boscell Road as set forth in the section above.

*Appellant's Basis for Appeal:* The appellant's letter (see Informational Item #2), describes that allowing another dance school within 2 miles of their dance school would severely impact their business and create unhealthy business competition.

**FISCAL IMPACT:** Not applicable.

**ENVIRONMENTAL REVIEW:** This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15303 (New Construction or Conversion of Small Structures).

**ENCLOSURES:**

- [Exhibit "A" - Project Plans](#)
- [Exhibit "B" - Findings & Conditions of Approval](#)
- [Informational #1 - Proposed Business Plan](#)
- [Informational #2 - Letter of Appeal](#)
- [Informational #3 - Planning Commission report](#)
- [Informational #4 - Draft minutes of Planning Commission meeting](#)

**RECOMMENDATION:**

1. Hold the public hearing;
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guideline 15301, Leasing of Existing Facilities;
3. Find the project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives, and policies set forth in the Land Use and Local Economy Chapters of the City's General Plan as enumerated within the staff report; and
4. Deny the appeal and uphold the approval of Zoning Administrator Permit PLN2011-00133 as shown in Exhibit "A" and described in Informational Item #1, based on the findings and as conditioned by the Zoning Administrator as shown in Exhibit "B".

## **6.1 Report Out from Closed Session of Any Final Action**

**7.1 AUTHORIZATION TO NEGOTIATE AND EXECUTE IMPROVEMENT AND MAINTENANCE AGREEMENTS WITH PROPERTY OWNERS FOR ACCEPTANCE AND IMPROVEMENT OF IRON HORSE LANE**

**Authorize the City Manager, or His Designee, and the Redevelopment Agency Executive Director, or His Designee, to Negotiate and Execute Improvement and Maintenance Agreements Between the City of Fremont, the Redevelopment Agency of the City of Fremont, and Owners of Real Property Abutting Iron Horse Lane, under Certain Prescribed Conditions, in Order to Cause the Physical Improvement and Acceptance of Iron Horse Lane from F Street to its Southeastern Terminus as a Public Street**

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**This is a joint item which appears this evening on both the City Council and Redevelopment Agency Board agendas.**

**Executive Summary:** Staff recommends the Agency Board and City Council authorize staff to conduct negotiations and execute a series of Improvement and Maintenance Agreements with property owners whose properties are contiguous to Iron Horse Lane between F Street and the southeastern terminus of this alley at 37930 Second Street. These agreements would contractually obligate the Redevelopment Agency to fund capital improvements to Iron Horse Lane which would be performed by the City under a Public Works Contract (PWC). In exchange, the affected property owners would grant roadway easements for the benefit of the City, and the property owners on the side of Iron Horse Lane closest to Niles Boulevard would commit to funding the maintenance costs for twenty years. Furthermore, in order to mitigate any potential increase in legal liability, all affected property owners would fully indemnify and pledge to hold harmless the City of Fremont and Fremont Redevelopment Agency for potential claims related to the design, construction, or use of the improved alley.

**BACKGROUND:** Iron Horse Lane is the privately owned alley running parallel to, and a half block off, Niles Boulevard. It serves primarily as secondary access to the businesses along Niles Boulevard for deliveries and garbage pickup. It is an unimproved dirt path, approximately 20 feet wide, and is in generally poor condition. It is also the location of power poles, the underground sewer line, gas line and for the two blocks from H to J Streets, the location of the water supply line. Historically, the Alameda County Water District (ACWD) has not improved the undersized water facilities, citing a lack of the necessary easements. In addition, over the years the dirt alley has been informally repaired using gravel and dirt to fill pot holes, slowly raising the grade of the alley and resulting in significant drainage problems for adjacent property owners.

**DISCUSSION/ANALYSIS:** Since 2006, when this project was first placed in the Agency's work plan, Redevelopment staff has worked closely with business leaders in Niles to identify a structure to resolve the problems presented by Iron Horse Lane for adjacent property owners while minimizing ongoing

maintenance costs that would otherwise fall on the City's constrained General Fund. Staff is now prepared to recommend an approach to solve the Iron Horse Lane issue, whereby the Redevelopment Agency would fund improvements to the alley, which would be performed by the City in exchange for roadway easements and the granting of full indemnification of the City and Agency by the property owners. In addition, the property owners on the side of the alley closest to Niles Boulevard would be obligated to fund the maintenance costs of the alley for twenty years.

*Proposed solution:* Staff proposes to negotiate and execute Improvement and Maintenance Agreements with all property owners contiguous to Iron Horse Lane between F Street and the southeastern terminus of the alley. These agreements would obligate the Agency to fund the capital improvements, which would be performed by the City under a Public Works Contract (PWC). The agreements would also address a variety of issues, as discussed below. The improvements would consist of re-grading; installation of pervious concrete pavement; installation of drain inlets and storm drain connections; new sewer laterals, and installation of traffic calming measures. Pervious concrete pavement, which allows water to pass through the slab, is planned because it eliminates the need for storm water treatment, and also eliminates the need for the periodic seal coats and overlays required with asphalt paving. Prior to the City project, ACWD plans to replace the existing one-half and three-quarter-inch lines that serve as mains with six- or eight-inch mains and install new water service laterals. After the project, Union Sanitary District (USD) will line their sewer mains by working from existing manholes. Pacific Gas and Electric (PG&E) may be required to replace their gas lines depending on the condition and depth of mains and service laterals.

*Maintenance:* The Improvement and Maintenance Agreements would require the owners of property contiguous to Iron Horse Lane on the side closest to Niles Boulevard to fund the costs of routine maintenance, with each property owner responsible for a share of the maintenance costs equivalent to the percentage of the alley contiguous to the owner's respective property. Failure to make the required annual maintenance payment by any property owner would result in a lien placed on their real property. The annual cost of routine maintenance is estimated at approximately \$2,360 in current dollars, equating to about \$1.20 per linear foot of the alley. In future years, assessments for maintenance would be the lesser of the actual cost or the current estimate adjusted for inflation. Property owners will make their required payments to the Finance Department upon receipt of their annual bill. These funds will be placed in an account for use by the City's Public Works Department, which will manage the maintenance of the alley.

*Benefits:* The primary benefit to the project will be improvements to accessibility of properties on the alley provided simply through paving. In addition, the roadway easements will allow the City to accept Iron Horse Lane as a public street and therefore give clear access rights to public and private utility providers for maintenance and replacement of their facilities. In the case of the two blocks between H and J Streets, this will allow ACWD to correct a problem with low water pressure that has caused difficulties for property owners for years. It will also mitigate the flooding problems experienced by property owners adjacent to the alley caused by the rising grade of the alley surface. Finally, it will make it possible for owners to benefit from legal secondary vehicular access off the alley without incurring the significant cost of making improvements to the alley.

Improvement to Iron Horse Lane will not, however, create new opportunities for subdivision. The City's Subdivision Ordinance (§8-1504(g)) defines an alley or lane as "(a) street which provides only



secondary access for abutting properties.” The action recommended in this staff report is not intended to provide primary access to properties abutting the alley or allow the creation of new lots having the alley as the only street frontage.

*Risks:* Historically, the issue of increased legal liability for the City of Fremont has been the primary source of reticence to accepting Iron Horse Lane as a public street. Staff believes that the indemnification/hold harmless clause provides sufficient mitigation to the risk of potential legal liability. In addition, there is a risk that the improvements to Iron Horse Lane will intensify its use and result in increased traffic speeds. Staff believes this risk can be mitigated by the installation of traffic calming measures. Finally, there is some risk that not all the abutting property owners will accept the terms of the Improvement and Maintenance Agreements. These agreements would not take effect until agreements had been delivered by all abutting property owners and executed on behalf of the City Council and Agency Board by the City Manager and Redevelopment Agency Executive Director and until the City, in its judgment, determines that all planning and financial requirements are in place.

*Next steps:* Upon Council and Board authorization, staff will begin executing the agreements with the relevant property owners. Once all property owners have executed agreements, staff will proceed with design work and coordination with the appropriate utility providers, including ACWD, USD, and PG&E. Staff will return to Council and the Board for award of the construction contract, probably in early 2012.

**FISCAL IMPACT:** While there is no direct fiscal impact to authorizing the execution of the agreements, the cost of the planned capital improvements funded by the Redevelopment Agency is estimated at \$2.6 million in the upcoming CIP cycle.

**ENVIRONMENTAL REVIEW:** The authorization, execution and implementation of the improvement and maintenance agreements with the relevant property owners is both exempt from the requirements of the California Environmental Quality Act (CEQA) and has been properly evaluated in connection with City Council and Agency Board review and certification of the Final Subsequent Environmental Impact Report (the "FSEIR") for the 2010 Consolidated Amended and Restated Redevelopment Plan (the "Redevelopment Plan").

The Iron Horse Lane project is exempt from CEQA under the categorical exemptions contained in 14 California Code of Regulations Sections 15301 and 15302(c), in that the project constitutes the minor alteration, reconstruction and replacement of an existing private right-of-way with an improved public right-of-way of the same location, dimensions and use.

The environmental impacts of the Iron Horse Lane project were evaluated in the FSEIR that was certified a little more than a year ago. No changes in the project, the environment, or available information have occurred that would require a further CEQA document in connection with the current recommended action. The concurrent City Council and Agency resolutions certifying the FSEIR and making required CEQA findings for the adoption of the Redevelopment Plan included a set of mitigation measures and a monitoring program, the relevant elements of which are incorporated in the Iron Horse Lane project pursuant to the proposed agreements among the City, the Agency and the relevant property owners.

**ENCLOSURE:** [Draft Resolution](#)

**RECOMMENDATION:** Staff recommends that the City Council and Redevelopment Agency Board authorize the City Manager, or his designee, and the Redevelopment Agency Executive Director, or his designee, to negotiate and execute Improvement and Maintenance Agreements with the owners of real property abutting Iron Horse Lane, under the conditions described in this staff report, in order to cause the physical improvement and acceptance of Iron Horse Lane from F Street to its southeastern terminus as a public street.

## 7.2 ACQUISITION OF THE MUNICIPAL PARCEL FROM THE REDEVELOPMENT AGENCY

### Adopt Resolution Authorizing the City of Fremont to Purchase the Municipal Parcel from the Redevelopment Agency and Make Related Statutory Findings

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#### A companion item is on the Redevelopment Agency agenda

**Executive Summary:** This report recommends the City of Fremont acquire the 40.1-acre parcel known as the Municipal Parcel at Pacific Commons from the Redevelopment Agency for the purposes of developing it as a City Park. The report includes information about the parcel, the benefits the citizens of Fremont would derive if it were purchased as a public park, and a discussion of the applicable policies, goals, and objectives of the Fremont General Plan and the Redevelopment Agency Five-Year Implementation Plan. This report further recommends that the City of Fremont make related statutory findings in connection with the proposed acquisition and resale of the site.

The City's purchase of the property from the Redevelopment Agency will be funded with \$4,372,117 of Development Impact Park Land Acquisition Funds.

**BACKGROUND:** The City Council has adopted the Consolidated Amended and Restated Redevelopment Plan for the Fremont Merged Redevelopment Project, which sets forth a plan for redevelopment of the Fremont Merged Redevelopment Project Area, in accordance with the California Community Redevelopment Law. The Redevelopment Agency is responsible for administering the Redevelopment Plan, which includes a set of goals and objectives for the Industrial Area. The City's General Plan and the Redevelopment Plan designate an approximately 40.1-acre property, commonly known as the Municipal Parcel at Pacific Commons, for municipal/institutional uses, with the intent that such uses would include high quality municipal facilities to serve the Industrial Area and the entire Merged Project Area and its residents, employees and businesses. Examples of qualifying municipal facilities are a citywide park and a multi-modal transit facility.

In furtherance of the goals, objectives, programs and development guidelines of the General Plan and the Redevelopment Plan, the City and the Agency have cooperated over the years on facilitating the development of the municipal facilities on the Municipal Parcel site. Specifically, in connection with the implementation of the Pacific Commons development on a portion of the Industrial Area containing the property, the City entered into a 2000 Amended and Restated Development Agreement with Catellus Corporation. Pursuant to this Agreement, the City purchased the Municipal Parcel site in 2001 and subsequently conveyed the property to the Redevelopment Agency in order to assist the Agency in securing a site for the transit facility and other municipal facilities. Since then, the City and the Agency have determined that the transit facility will require only a limited portion of the property and that

significant additional efforts will be necessary to determine the feasibility of development of the transit facility. Based on these considerations, staff recommends that the City acquire the Municipal Parcel from the Redevelopment Agency and move forward with development of the City Park on most of the property, which would create near term benefits to the Industrial Area, the Merged Project Area and the entire Fremont community, while preserving the opportunity for future development of the transit facility if such development proves feasible in the future.

#### **DISCUSSION/ANALYSIS:**

***Pacific Commons Project and Development Agreement:*** In September 1996, the City Council approved a mixed commercial and industrial business park and a development agreement for the project area, which is located west of Interstate 880, south of Auto Mall Parkway, and north of Fremont Boulevard/Cushing Parkway. This project is commonly known as “Pacific Commons”, and encompasses over 800 acres of land owned by the Catellus Development Corporation. As a condition of approval, the developer was required to establish a 390-acre wetland preserve on site, reducing the developable portion of the property from 682 acres to about 373 acres, including approximately 41 acres of potential City recreational use and train station site and 12 acres for a storm water treatment facility.

The Development Agreement between the City and Catellus contains an option for a bargain-priced purchase of land (\$2.50 per square foot, or \$108,900 per acre) for “...municipal facilities and public purposes that are compatible with the project, including without limitation a public park, a transit station, and ancillary public uses such as local maintenance, parking and minor retail uses....” The City exercised this option on November 1, 2000, in order to purchase the Municipal Parcel at this discounted price before the December 19, 2000 deadline in the Agreement. The Parcel was subsequently purchased by the Agency for the purpose of a transit station.

The property has been evaluated over the years for use as a transit station, power transfer station, parking lot for a major league ballpark proposal, and as a Community Park. In 2008, staff completed some preliminary design studies to analyze how a citywide sports related park could fit on the site, which is shown in Enclosure 1, Exhibit B. The study allows for a 5 to 10 acre transit station adjacent to the railroad tracks and shared parking between the park development and the transit station.

The site provides for a significant opportunity to enhance the citywide park system by adding a much needed sports park facility in an area of the city that would not cause negative impacts to adjacent residential neighborhoods. Impacts for such a large facility would primarily be traffic, ambient lighting, and noise. The Municipal Parcel would allow the park system to address a long standing need to provide cricket fields and additional soccer fields for Fremont residents. In addition to those base line facilities, the site would support tennis, basketball, skating, bicycle racing/training, football, picnic areas, parking, restrooms, and meeting rooms.

***Property description:*** The property under consideration for acquisition as a park is located at the southwesterly terminus of Auto Mall Parkway, at the northwesterly corner of the Pacific Commons project (see Enclosure 3). The Municipal Parcel is Parcel A on Parcel Map 7692.

The exact size and configuration of the park portion of the site have yet to be determined, but staff does not anticipate that the potential transit station will need to be any larger than five acres. Therefore, the

City may be able to utilize at least 35 acres, but possibly all 41 acres for a citywide park. The City would use park dedication in lieu fees to purchase the land for this purpose.

***Developer's responsibilities:*** Under the terms of the Development Agreement, Catellus has completed or will be required to complete the following improvements, which are relevant to the Municipal Parcel:

- a. "The installation of power, water, sanitary sewer, natural gas, cable, telephone and ...other such utilities as Developer is customarily installing to other parcels within the Project Site, such utilities to be stubbed to the property line of the Municipal Parcel."
- b. "The widening and improvement...of that portion of Auto Mall Parkway beginning at the corner of Nobel Drive and extending to and terminating at the western boundary of the Municipal Parcel".
- c. The installation of a bicycle and pedestrian trail, which will become part of the Bay Trail. This trail is discussed further in the section titled "Encumbrance", below.
- d. The installation of the storm drainage system, which will serve the entire Pacific Commons project, will underlie portions of the Municipal Parcel. The storm drain easements shown on Enclosure 3 are discussed further in the section titled "Encumbrance", below.

***Physical Configuration:*** The entirety of the Municipal Parcel (Parcel A on Tract 7692) is trapezoidal in configuration, with approximately 1,250 feet of frontage along Auto Mall Parkway.

Staff evaluation: The site configuration can support development of a citywide park.

***Topography:*** The Criteria for Site Selection require new city parks to have an average slope gradient no greater than 5% to provide flat, usable recreation spaces. This property is generally flat, with existing slope from east to west. Topsoil needs to be added to the majority of the site to raise the overall site elevation by two feet above the year 2000 recorded elevations to allow the site to support structures above the flood level. The Redevelopment Agency has accepted clean soil to be placed on the site from various sources over the past 10 years, which has raised the elevation by one foot. The park development project would be required to place one more foot before development. Therefore, site topography can support development to the standards for citywide parks.

Staff evaluation: The site topography is appropriately suited to citywide park development.

***Encumbrance:*** The Parcel Map 7692 shows the following proposed easements affecting Parcels A:

1. Proposed 30-foot access and trail easement: The purpose of this easement is to provide a bicycle and pedestrian trail, which may become part of the Bay Area-wide Bay Trail. The trail is also meant to provide a means of off-street access to work sites at Pacific Commons for future employees who disembark at the potential transit station, and walk or ride a bicycle to their work place. The developer has completed the portion of the trail that borders the Municipal Parcel to the east. Staff will work with the developer to ensure that the location of the trail along Auto Mall Parkway does not have any negative impacts on development, use or maintenance of the citywide park site. The trail will enhance the site development plan for the park, and will become an amenity for park users.
2. Proposed 30-foot and 40-foot storm drain easements: The easements for the underground storm drainpipes are for the Alameda County Flood Control and Water Conservation District. The easements

carry restrictions on the type of development that can occur on the surface of the easements. However, staff does not anticipate that these restrictions will significantly affect the ability of the City to design and develop the park to meet citywide park development standards.

There are PG&E towers and power transmission lines located immediately to the east of the Municipal Parcel, which run parallel to the eastern property line. The power lines will not restrict site development.

The site is not located within a geologic hazard zone.

Staff evaluation: The site is not constrained by encumbrances that will have a significant impact on the City's ability to develop the site as a citywide park.

**Access:** Vehicular access to the site is available from Auto Mall Parkway. Park users can also cross Interstate 880 on Stevenson Boulevard, Mowry Avenue, or Thornton Avenue and turn south on Cherry Street or Boyce Road, which then connects to Auto Mall Parkway. Catellus Development Corporation has completed the Cushing Parkway Extension, which extends Cushing Parkway north into the Pacific Commons Project. The extension includes a bike lane. There are no bike lanes on the Auto Mall Parkway or Fremont Boulevard (south) overpasses.

In addition to using city streets, bicyclists could choose to use the Bay Trail, once it is fully developed, to get to the park.

Staff evaluation: There is reasonable access for drivers and bicyclists to the site. Residential neighborhoods will not be affected by increased traffic resulting from park use.

**Environmental constraints:** Both Phase I and Phase 2 Environmental Site Assessments have been completed for the site. For Parcel A, the Site Assessments did not reveal any significant environmental concerns.

There are between three and five monitoring wells on the property. The monitoring wells were installed in 1990 to test ground water conditions. Prior to development, the wells will need to be drilled out and cemented with slurry cement. The costs for this work will be minor.

Staff evaluation: This site is not constrained by hazardous materials or unsafe environmental conditions that would limit future development as a citywide park.

**Compatibility with Surrounding Land Uses:** Existing and future land uses adjacent to the site are as follows:

To the north: There is a PG&E substation to the north, across Auto Mall Parkway. The substation is set back a considerable distance from Auto Mall Parkway and, aside from visual impact, will not have any negative impacts on the design, development and use of the citywide park. The park will not have a negative impact on the substation's operation.

To the south: Parcel B is a stormwater treatment pond that services the entire Pacific Commons Development, including the Municipal Parcel, and Parcel C, which is primarily Wetlands Preserve.

To the east: As mentioned previously, there are PG&E towers and transmission lines immediately to the east of the Municipal Parcel. To the east of the towers, Catellus has developed buildings for restricted industrial and commercial uses. The park will be compatible with these uses.

To the west: There are railroad tracks immediately to the west. The Tri-Cities Landfill (formerly known as the Durham Road Landfill) is located west of the railroad tracks. The location and operation of the Landfill will have an impact on park users. The Landfill is a significant visual presence, and dump trucks drive along Auto Mall Parkway on their way to the Landfill, creating traffic and noise impacts. The landfill is scheduled to close no later than late 2012, which will eliminate the traffic and other impacts from the operations.

Staff evaluation: Acquisition and development of this site for a park would be compatible with all of the existing and planned land uses in the area.

***Maintenance Impacts:*** Maintenance costs for a new park depends on the type of facilities included in the park, the specific design layout, location, and the service level expected. Maintenance Services will review the proposed design of a new park and make recommendations that would minimize maintenance effort.

The cost to maintain the site in its current undeveloped state is approximately \$15,000 per year in contract maintenance services. This involves periodic weed disking and basic land management to keep the property in a condition suitable for future development.

Staff evaluation: Acquisition and development of this park would require additional Park Maintenance staff in order to maintain the park at the level of service currently provided to citywide parks throughout the City's system. Staff will explore a design and program for the site that generates revenue from facility rentals to recover the maintenance costs to the greatest extent possible.

***Capital Improvements, Operations, and Supervision Costs:*** The development of this park could be funded with Park Facilities fees, which are intended for this purpose. The actual costs of operations and supervision will be considered in more detail during design development.

Staff evaluation: Costs of capital improvements, operations and supervision can be addressed in the City's standard operational and capital budget processes.

***Summary of the General Plan Criteria for Selection of Park Sites:*** This site represents an important opportunity for the City to acquire property, which comes with many assets, such as large size, developable configuration, flat topography, highly discounted acquisition price, and support the development of a new citywide park to serve the entire community. Fremont's vacant land supply is rapidly diminishing, and the number of large parcels that meet the City's criteria is even more limited. Acquisition of this parcel would satisfy a meaningful portion of the City's obligation to expand the park system in order to serve the city's new residents, and to maintain the high level of satisfaction in the park system currently enjoyed by the community.

**Recreation Commission Recommendation:** On June 1, 2011, the Recreation Commission considered the proposed purchase of the Municipal Parcel site and voted (6-0-0-1) to recommend the following to the City Council:

- That the Municipal Parcel conforms to the Criteria for Selection of Park Sites included in the General Plan.
- To purchase the 40.1-acre site (APN 531-0185-012) from the Redevelopment Agency in the amount of \$4,372,117 and to appropriate funds to 541PWC8758 for the acquisition.

**City-Redevelopment Agency Conveyance Agreement:** The key terms and conditions of the City and Agency Property Conveyance Agreement for the proposed purchase of the Municipal Parcel contain the following provisions:

- The Agency will sell the Property to the City for a purchase price of \$4,372,117 (\$2.50 per square foot; the same price at which the Agency previously acquired the Property from the City).
- The City will acquire the Property in an "as is" condition and will take the full risk, obligation and cost for putting the Property into developable physical condition, except that the Agency will make available up to \$300,000 of the purchase price as an escrow holdback that the City may use to pay its reasonable costs of removing and hauling to a qualified landfill approximately 6,500 cubic yards of petroleum-impacted soil currently located on the Property.
- The City will be responsible for obtaining funding for and designing and constructing a park on the Property as expeditiously as possible, generally containing the park improvements described and diagrammed in the attached Enclosure 1, Exhibit B.

**Redevelopment Law Compliance:** The proposed conveyance of the Municipal Parcel site from the Redevelopment Agency to the City will help in addressing the following remaining blight conditions in the Project Area:

- **Need for Regional Transit to Support Industrial Area Development:** The designation of a portion of the Property for the Transit Facility will continue the legacy of region-serving transportation projects undertaken by the Agency in cooperation with the City. These projects have contributed to steady economic development in the region and eliminated considerable blight in the Industrial Area. However, the lack of a public transit alternative to serve the existing and potential employment base of the Industrial Area is an additional impediment to an overall workable transportation system for this area. Therefore, inaccessibility and underutilization of land continue to impede the economic development of the entire Industrial Area. The addition of a Transit Facility would improve public transportation options for residents of southern Alameda County, contribute to increased economic activity, better circulation and improved access in the Industrial Area, and reflect the City's increasing focus on transit improvements and transit-oriented development as key parts of its overall redevelopment strategy for Fremont.



- **Inadequate Public Improvements:**

- Parks: One of the ongoing blighting conditions of the Project Area is the lack of public spaces and facilities such as parks and recreational centers. The lack of these facilities inhibits economic development and detracts from the residential attractiveness of Fremont. Region-serving recreational facilities, such as are anticipated on the Property and will be accomplished through the Agreement, will help to fill this need, thereby promoting economic revitalization of the Project Area by attracting additional visitors to local businesses and improving quality of life in Project Area neighborhoods—all of which will contribute to a better physical and economic environment for private sector reinvestment that will further eliminate remaining Project Area blight conditions.
- Circulation: The Agreement and potential future development of the Transit Station will also enhance traffic conditions in the Industrial Area, thereby improving circulation and making the Industrial Area portion of the Project Area a more attractive and welcoming place to recreate and conduct business.

- **Hazardous Materials Cleanup**: As described above, there is known petroleum-contaminated soil on the Property. The Agreement provides a funding mechanism and contractual requirement for the City to remediate this impacted soil, thereby eliminating an additional blighting condition currently hindering the viable use of the Property.
- **Economic Development**: The development of a Transit Facility and a regionally drawing park/sports complex will result in a high number of new Bay Area users to the Project Area to recreate and shop. Due to the proximity of the proposed park/sports fields to the retail businesses of Pacific Commons, an increase in customer traffic and revenue is expected at Pacific Commons, which will foster continued private investment in the Industrial Area portion of the Project Area.

***Consistency with Implementation Plan:*** The Implementation Plan provides that the Transit Facility may be developed on the Municipal Parcel property to the extent of funding availability. The proposed conveyance of the property from the Redevelopment Agency to the City is consistent with the Implementation Plan in that it:

- Requires the City to use good faith efforts to obtain the necessary funding for, and to determine the feasibility of, development of the Transit Facility;
- Requires the City expeditiously to design and construct the Transit Facility, if such development is determined to be feasible and the necessary development funds are procured; and
- Pending such determination, requires the City to not develop the portion of the Property designated for the potential Transit Facility for any use that would hinder development of the Transit Facility.

**FISCAL IMPACT:** The proposed purchase of the Municipal Parcel site will be funded from the Park Land Dedication (in lieu fees) Fund 541, which currently has a balance of \$14,670,000. Park Land Dedication Fund 541 consists of in-lieu fees collected from developers and, by State law, can only be used to acquire or to renovate park land. After the proposed purchase of the Municipal Parcel in the amount of \$4,372,117, Fund 541 will have a remaining balance of \$10,297,883.

**ENVIRONMENTAL REVIEW:** The acquisition of the Municipal Parcel for subsequent development of a transit station and/or City park is within the scope of the physical activities that were evaluated in the Environmental Impact Report (EIR) for the development and use of the area known as Pacific Commons. The Pacific Commons EIR (SCH#1996052016), including the 2000 and 2010 Supplements, was previously certified by the City. There are no substantial changes with respect to the project and/or its circumstances, which require major revisions of the SEIR due to new significant environmental effects, a substantial increase in the severity of previously identified significant effects, or new information of substantial importance as identified in Section 15162 of the CEQA Guidelines. Findings were adopted on May 9, 2000 by the City Council in regards to environmental effects and mitigation measures pertinent to the subject site. The previously adopted mitigation monitoring plan is still in effect for the subject site.

**ENCLOSURES:**

- [Draft Resolution: Authorizing the City of Fremont to Purchase the Municipal Parcel from the Redevelopment Agency and making related statutory findings](#)
- [Enclosure 2: Summary Report Pursuant to Section 33433 of the Community Redevelopment Law Regarding a Property Conveyance Agreement between the City of Fremont and the Redevelopment Agency](#)
- [Enclosure 3: Parcel Map 7692](#)

**RECOMMENDATION:**

1. Find that the site (6900 Auto Mall Parkway, known as “the Municipal Parcel”) is in conformance with the Criteria for Selection of Park Sites included in the General Plan; and
2. Approve the purchase of the 40.1- acre Municipal Parcel site (APN 531-0185-012), depicted as Parcel A in Enclosure 3, from the Redevelopment Agency in the amount of \$4,372,117 and make related statutory findings; and
3. Appropriate the funds in the amount of \$4,372,117 to account 541PWC8758 for the acquisition of the property.

### 7.3 REDEVELOPMENT AGENCY ISSUANCE OF TAX ALLOCATION BONDS

#### Re-Authorization to Issue 2011 Redevelopment Agency Tax Allocation Bonds

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#### Companion reports are on tonight's agendas for the Redevelopment Agency and the Fremont Public Financing Authority.

**Executive Summary:** On January 17, 2011, the City Council and the Redevelopment Agency (RDA) Board approved the issuance of up to \$140 million of tax allocation bonds by the Redevelopment Agency for the construction of infrastructure projects, the most significant one being the Irvington BART station. On January 25, 2011, the Public Financing Authority authorized the purchase and sale of the RDA's tax allocation bonds. The bonds were scheduled to price on February 24, but that did not occur because of uncertainty created by the posting of proposed legislation to "disestablish" redevelopment agencies on the State Department of Finance's website late in the day on February 23. On March 8, 2011, the City Council, Redevelopment Agency Board, and Public Financing Authority Board all directed staff to suspend the transaction because of uncertainties related to the Governor's budget proposal to eliminate redevelopment in California, and because the Agency had not yet formalized its arrangements with BART for construction of the Irvington BART station. Since that time, no further legislative action has been taken to eliminate redevelopment, and staff has made progress with BART with respect to construction of the Irvington BART station. Because of inaction by the State Legislature to eliminate redevelopment and progress made with BART with respect to construction of the Irvington BART station, staff believes it is prudent and in the best interests of the Agency, the City and the Authority to re-authorize the issuance of the 2011 Redevelopment Agency Tax Allocation Bonds in the aggregate principal amount of \$140 million.

**BACKGROUND:** On January 10, 2011, the Governor released his 2011/12 budget proposal. The May update of his budget proposal (the so-called "May Revise") was released on May 16, 2011. A major provision of the Governor's original budget proposal, which is still included in the May Revise, is the proposed elimination ("disestablishment") of redevelopment agencies throughout the State by July 1, 2011. The elimination of redevelopment agencies as of July 1, 2011 would potentially mean the following:

- Full Agency closure by July 1, 2011. There would be no new allocation of tax increment revenues in future years, with the exception of sufficient future property taxes needed to meet future scheduled payments of each agency's existing obligations and debt service. A local "successor agency" would be established, whose purposes would be solely to receive sufficient future property taxes to make payments to retire the agency's existing debts and obligations, to liquidate the agency's assets, and to wind up the agency's existence.

- Unspent and unencumbered Housing Fund balances would, if elected by the City, be retained by the City. If the City elects to retain the housing function of the former RDA (staff assumes it would choose to do so), then all rights, powers, assets, liabilities, duties and obligations associated with the housing function would remain with the City but with no future funding for affordable housing proposed.

This continues to be a contentious proposal, currently without sufficient support in the Legislature for enactment. Both the California Redevelopment Association and the League of California Cities continue to vigorously lobby against this proposal, and two redevelopment reform bills, SB 450 relating to housing reforms, and SB 286 relating to general reforms of redevelopment, have been introduced and are under consideration. There appears to be no more certainty that the Governor's proposal will be enacted now than there was three months ago.

**DISCUSSION/ANALYSIS:** With the adoption of the 2010 Merged Project Area Plan Amendment, a revenue stream has been secured for construction of future redevelopment-related improvements, including the Irvington BART station. As a result, the Agency and City initiated activity on the Irvington BART project, including approval of a \$5.3 million pre-engineering funding agreement with BART to begin the process of moving forward with the Irvington BART station. Staff has been working closely with BART staff to formalize the responsibilities for the process of land acquisition, development and construction of the station. If developed soon, BART has indicated it can build the station as part of the development of the Warm Springs extension, thereby saving the Agency significant costs.

Given the Agency's other priority projects and its low available cash position, discussions have been underway for some time to issue Tax Allocation Bonds to raise the \$120+ million in funding necessary for BART station construction.

**Proposed Debt Issue:** Issuance of tax allocation bonds is a routine method for financing redevelopment projects prior to collection of tax increment. Although the tax increment revenue cap in the Industrial project area was recently raised from \$400 million to \$1.5 billion, those revenues will be received over the next 25 years. Issuing tax allocation bonds means those resources are available for large projects sooner. Staff has been contemplating the issuance of debt for construction of the Irvington BART station, the largest project funded by the Plan Amendment, since the raising of the tax increment revenue cap. Since the original authorization to proceed with this transaction, staff has worked with the financial advisor (KNN Public Finance), bond counsel (Quint & Thimmig), Redevelopment Agency special counsel (Goldfarb & Lipman), and underwriters (Goldman Sachs) to structure and market this issue. The proposed issue has been rated A+ by Standard & Poor's and A-2 by Moody's. Both ratings reflect the financial strength of the Agency, as well as the solid nature of the project to be funded with the bond proceeds.

**Proposed Financing Structure:** The following estimated amounts reflect market conditions at the time of agenda preparation. The actual costs may differ from this estimate at the time of bond sale, but the maximum principal amount will not exceed the \$140 million proposed par amount. The following information is based on an estimated issuance amount of \$134,720,000.

Par Amount	\$134,720,000
Term	25 Years, Final Maturity September 1, 2036
Average Interest Rate	6.10%
All-Inclusive True Interest Cost	6.37%
Average Annual Debt Service Payment	\$10,624,050
Reserve/Capitalized Interest Fund	\$10,698,406

The All-Inclusive True Interest Cost includes underwriter's fees and costs of issuance (legal and financial consultant fees, trustee fees, credit rating agency fees, etc.). Although the City has experienced lower interest costs on its variable rate demand certificates of participation, fixed rate financing is the more common structure for tax allocation bonds. Although the City and Agency generally sell long-term debt competitively, this transaction is proposed as a negotiated sale because of the unique circumstances in the municipal markets with respect to redevelopment agency debt issues. The financial advisor for this transaction, KNN Public Finance, requested proposals from a number of underwriters as to their approach and fees for this particular transaction. The successful proposer was Goldman Sachs, based on both their fees and their approach to aggressively marketing this issue to obtain the most beneficial interest rate for the City, the Agency and the Authority.

To effectuate this transaction, the Authority would purchase the 2011 Bonds from the Agency and concurrently resell the bonds to the underwriter, so long as the total underwriter's discount, excluding original issue discount (which does not constitute compensation to the underwriter), does not exceed 3% of the principal amount of the 2011 Bonds. In addition, the true interest cost of the Bonds could not exceed 8.25%, and the final maturity date could not be later than September 1, 2036. If State legislation is enacted to prohibit the sale, this debt issuance will be postponed or cancelled.

The issuance of the Bonds will be conditioned on the Agency and the City entering into a satisfactory definitive agreement for the Agency to fund and BART to design and construct the Irvington BART station with City input, review and oversight. That agreement with BART is being readied for Agency Board and City Council consideration, tentatively scheduled for June 21. At the time the Agency Board and the City Council are requested to act on the BART agreement, they will also be asked to make the appropriate CEQA compliance determinations and Community Redevelopment Law findings related to the Agency's proposed public improvements grant to BART for the Irvington Station design and construction.

The following table shows the estimated sources and uses of bond proceeds:

**SOURCES:**

Par Amount	<u>\$134,720,000</u>
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**USES:**

Projects	\$120,000,000
Reserve/Capitalized Interest Fund	10,698,000
Underwriter's Discount	662,000
Cost of Issuance	535,000
Net Original Issue Discount	<u>2,825,000</u>

<b>TOTAL USES</b>	<u><b>\$134,720,000</b></u>
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If the Legislature approves the Governor's budget proposal to eliminate redevelopment, then beginning in fiscal year 2012/13, the property tax revenue that, under current law would have been considered property tax increment, would be first used by the "successor agency" to the disestablished Fremont Redevelopment Agency to pay the recognized debts of the former Redevelopment Agency. The balance of such freed-up property taxes would then be divided among the taxing entities and local jurisdictions. This would mean that instead of a pass-through payment from the Agency, the City would receive its normal property tax share (approximately 15%) of such freed-up property tax revenues, including incremental assessed valuation growth in the redevelopment project areas.

**FISCAL IMPACT:** The Redevelopment Agency currently receives approximately \$34.5 million in tax increment revenue annually. If no new Agency indebtedness is issued and this revenue instead were to be distributed to the City and other taxing entities under an enacted form of the Governor's budget proposal, the City's share would be approximately \$4-5 million. This assumes the Agency has no other existing outstanding debt and the current Agency/City Master Public Improvements Agreement is not followed in the future. This General Fund revenue would be unrestricted and the City would be free to spend the revenue however it chooses.

If the Agency were to issue bonds that are recognized as a pre-existing debt under an enacted version of the Governor's budget proposal, the pool of available property tax revenue would be reduced by an amount that the "successor agency" would first draw down to pay the annual bond debt service, with a resulting impact on the City's General Fund. With annual debt service of \$10.7 million, the net property tax revenue to be distributed among local governments after payment of the proposed bond debt service would be \$34.5 million minus \$10.7 million, or \$23.8 million. While this would mean a decrease of \$1.6 million in net tax revenue to the City's General Fund (\$3.6 million instead of \$5.2 million), it would mean that \$120 million for construction of the Irvington BART station would be secured.

**Financing Team:** Staff will continue working with KNN Public Finance as financial advisor, and Quint & Thimmig as bond counsel and disclosure counsel. Goldfarb & Lipman, special counsel retained by the Agency, will also review the documents. Seifel Consulting, Inc., the Agency's financial consultant, will provide the analysis to make sure that tax increment to be collected is sufficient to pay the obligation. Union Bank will serve as bond trustee, and Goldman Sachs will serve as underwriter.

**ENVIRONMENTAL REVIEW:** None required.

**ENCLOSURE:** [Draft Resolution](#)

**RECOMMENDATION:** Staff recommends that the City Council act as follows:

1. Approve the issuance and sale of the 2011 Tax Allocation Bonds.
2. Adopt a resolution approving the issuance and sale of tax allocation bonds of the Redevelopment Agency of the City of Fremont to finance redevelopment activities within or for the benefit of the Agency's Fremont Merged Redevelopment Project.

#### 7.4 FEDERAL GOVERNMENT RELATIONS CONTRACT

##### **Authorize the City Manager to Enter into an Agreement with Holland and Knight, LLP to Provide Government Relations and Strategic Advice and Federal Advocacy for Efforts Related to the Development of the South Fremont/Warm Springs Area**

###### **Contact Person:**

Name:	Lori Taylor	Fred Diaz
Title:	Director	City Manager
Dept.:	Economic Development	City Manager's Office
Phone:	510-284-4024	510-284-4000
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**Executive Summary:** The purpose of this report is to seek input and formal endorsement from the Council of the City Manager's intent to hire a professional government relations firm, Holland & Knight, LLP, to assist in the development of a strategy to gather federal support and resources for the future development of the South Fremont/Warm Springs study area and to develop relations with major property owners, including Union Pacific Railroad.

Under normal circumstances, the City Manager would proceed with this kind of contract through day-to-day operations. However, given the importance of this contract and the potential long term ramifications of these efforts, the City Manager believes it is desirable to seek the direction and approval from the Council.

**BACKGROUND:** Since August 2010, work has been underway on a series of studies related to 850-acre South Fremont/Warm Springs Study Area. This study area includes the former NUMMI automobile manufacturing plant (now the Tesla Factory) and surrounding large vacant parcels, as well as lands surrounding the planned Warm Springs BART Station. These studies are primarily funded through a \$333,000 federal Economic Development Administration grant that was awarded to the City to create a reuse and revitalization strategy for the City to address the closure of the NUMMI plant and the loss of over 5,000 jobs, as well as to promote development near the future South Fremont/Warm Springs BART station. The study will include a market/economic analyses, land use alternatives, infrastructure and cost analyses, and a financial assessment.

In mid-December 2010, staff presented three transit-oriented development (TOD) land use concepts for Council consideration. In an effort to revitalize the area and increase transit usage, each of the three alternatives included significant employment generation of between 13,800 and 31,400 jobs. Two of the land use concepts provided for a range of residential densities that would have included between 1,480-2,530 housing units in an effort to foster a vibrant residential component to a transit oriented development. In early January, staff learned that Union Pacific Railroad (UPRR) purchased 167 acres of vacant land (formerly owned by NUMMI north and south of the Tesla Factory) to provide freight rail services for its customers. This property purchase has significant impacts on the long term land uses for the area and has necessitated a pause in the efforts to complete the South Fremont/Warm Springs Area Studies.

**DISCUSSION/ANALYSIS:** The railroad is exempt from local government land use regulations. The City has had several conversations with UPRR officials to understand their intended use of these lands, as well as the implications on the City's planning process for the area. In meetings with UPRR on January 21, 2011 and April 15, 2011, staff learned that although formal plans have not yet been developed by UPRR for the sites, it is likely UPRR will use the property for either an intermodal facility or an automobile marshalling facility.

Because the development of this study area as a TOD area is of critical long-term importance to the region from the perspective of employment and housing generation, it is prudent that the City better understand how to strategically promote development intensity in the Study Area. In addition, large scale development projects often require assistance from federal agencies for capital dollars. Staff believes that professional guidance in attracting federal support and resources for the development of this key opportunity site is critical and guidance in developing the City's relationship with major property owners, including UPRR may be advantageous.

**FISCAL IMPACT:** Sufficient appropriation authority exists within the General Fund. No additional appropriation of funds is needed.

**ENVIRONMENTAL REVIEW:** None required.

**ENCLOSURE:** None.

**RECOMMENDATION:** Formally endorse the City Manager's recommendation to develop a government relations strategy and advocacy efforts for the development of the Warm Springs/South Fremont area, and authorize the City Manager to enter into an agreement with Holland & Knight, LLP in an amount not to exceed \$90,000.



**8.1 Council Referrals – None.**

**8.2 Oral Reports on Meetings and Events**



## ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD .....	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS .....	Geographic Information System
ACE .....	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD .....	Alameda County Flood Control District	HARB .....	Historical Architectural Review Board
ACTA .....	Alameda County Transportation Authority	HBA .....	Home Builders Association
ACTIA .....	Alameda County Transportation Improvement Authority	HRC .....	Human Relations Commission
ACWD .....	Alameda County Water District	ICMA .....	International City/County Management Association
BAAQMD .....	Bay Area Air Quality Management District	JPA .....	Joint Powers Authority
BART .....	Bay Area Rapid Transit District	LLMD .....	Lighting and Landscaping Maintenance District
BCDC .....	Bay Conservation & Development Commission	LOCC .....	League of California Cities
BMPs .....	Best Management Practices	LOS .....	Level of Service
BMR .....	Below Market Rate	MOU .....	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD .....	Central Business District	NEPA .....	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's .....	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG .....	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA .....	California Environmental Quality Act	PC.....	Planning Commission
CERT .....	Community Emergency Response Team	PD .....	Planned District
CIP .....	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA .....	Congestion Management Agency	PVAW .....	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF .....	City of Fremont	RDA .....	Redevelopment Agency
COPPS .....	Community Oriented Policing and Public Safety	RFP .....	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC .....	California Transportation Commission	RHNA .....	Regional Housing Needs Allocation
dB .....	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO .....	Development Organization	RWQCB .....	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET .....	Southern Alameda County Narcotics Enforcement Task Force
EBRPD .....	East Bay Regional Park District	SPAA .....	Site Plan and Architectural Approval
EDAC .....	Economic Development Advisory Commission (City)	STIP .....	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS .....	Environmental Impact Statement (NEPA)	T&O .....	Transportation and Operations Department
ERAF .....	Education Revenue Augmentation Fund	TOD .....	Transit Oriented Development
EVAW .....	Emergency Vehicle Accessway	TS/MRF .....	Transfer Station/Materials Recovery Facility
FAR .....	Floor Area Ratio	UBC .....	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa .....	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA .....	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27  
BROADCAST SCHEDULE**

<b><i>Date</i></b>	<b><i>Time</i></b>	<b><i>Meeting Type</i></b>	<b><i>Location</i></b>	<b><i>Cable Channel 27</i></b>
June 14, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 21, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 28, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 5, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 12, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 19, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 26, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
		August Recess		
September 6, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 13, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 20, 2011	TBD	Work Session	Council Chambers	Live
September 27, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 3, 2011	4-6 p.m.	Joint Council/FUSD Meeting	Council Chambers	Live
October 4, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 18, 2011	TBD	Work Session	Council Chambers	Live
October 25, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live